

CALIFORNIA COASTAL COMMISSION

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**Item Th 8d**

September 28, 2005

TO: Commissioners and Interested Persons

Following page 90 is a report addendum
posted on the web on October 11, 2005.

FROM: Deborah Lee, Senior Deputy Director
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SUBJECT: Staff Recommendation on City of Newport Beach Land Use Plan
Amendment 1-04 (LUP Update) (For Public Hearing and Action at the
Coastal Commission Meeting of October 13, 2005)

SUMMARY OF STAFF REPORT**SYNOPSIS**

The proposed Land Use Plan Amendment (LUPA) was submitted on July 2, 2004 and filed on July 23, 2004. A one-year time extension was granted on September 10, 2004. As such, the last date for Commission action on this item is October 21, 2005.

SUMMARY OF AMENDMENT REQUEST

The proposed amendment consists of a comprehensively updated Land Use Plan (LUP) that is intended to replace the current LUP, which was certified in 1982 and again in 1990. The City has reorganized the LUP, rewritten the narrative, and substantially modified each policy section. The updated LUP consists of five chapters: Introduction, Land Use and Development, Coastal Access and Recreation, Coastal Resource Protection, and Glossary. Submittal of the LUP is the first part of the City's effort to gain Local Coastal Program (LCP) certification. The City is currently working on an Implementation Plan (IP), which will be submitted after LUP certification.

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **DENY** the proposed City of Newport Beach Land Use Plan Amendment 1-04 as submitted and **APPROVE** the amendment subject to suggested modifications. The motions to accomplish this are found on Page 5.

The major issues raised by this amendment request are designation and protection of environmentally sensitive habitat area (ESHA) and wetlands, coastal bluff definition and setbacks, provision of adequate visitor-serving commercial uses, and inclusion of development standards.

ANTICIPATED AREAS OF CONTROVERSY

The majority of the City's initial objections to the suggested modifications have been resolved through ongoing negotiations. The City's primary remaining objections to the modifications deal with coastal bluff development and wetlands delineation.

Coastal Bluffs

The City's LUP proposes the use of a "predominant line of development" setback for new blufftop development. Commission staff recommends that new blufftop development be set back at least 25 feet from the bluff edge where the bluff is subject to marine erosion. Applying the City standard, development would be allowed to occur as close as 18 feet to the bluff edge. Commission staff is maintaining that the 25-foot minimum be applied to all new blufftop development (subject to marine erosion) to ensure geologic stability and the preservation of scenic resources, consistent with the Coastal Act and past Commission practice in Orange County.

Another area of controversy surrounds the definition of coastal bluffs. The City contends that certain bluffs that have been subject to substantial cut and fill are more like manufactured slopes rather than natural slopes. They assert that the bluff faces along Bayside Drive are not the result of erosion, faulting, or folding, and are no longer subject to marine erosion due to intervening development. Therefore, the City feels that such bluffs do not meet the definition of coastal bluffs and should not be subject to the requisite development standards, including setbacks for primary structures and accessory improvements. The suggested modifications remove any distinction between altered and unaltered bluffs and require new development to be sited based on stability and public view protection issues. The suggested modifications do distinguish between coastal bluffs subject to marine erosion and bluffs that are no longer subject to marine erosion and apply different setback requirements to each circumstance.

Wetlands

Differences remain regarding wetland definition and delineation. The LUP contains a statement that wetlands do not include vernal wet areas where the soils are not hydric. However, the Commission has previously found these types of vernal wet areas generally to qualify as wetlands, especially where there is a preponderance of wetland vegetation.

There is also discrepancy between the ways in which the City and the Commission address the existence of ambiguities in wetland characteristics. The LUP states that the presence or absence of "*more than one*" wetland parameter may be considered along with other factors to determine whether an area meets the definition of a wetland and to delineate wetland boundaries. The wetland identification method presented in the LUP is inconsistent with the California Code of Regulations, which states that only one wetland parameter is necessary to find an area to be a wetland.

ADDITIONAL INFORMATION

For further information, please contact **Anne Blemker** at the South Coast District Office of the Coastal Commission at **(562) 590-5071**. The proposed amendment to the Land Use Plan (LUP) of the City of Newport Beach Local Coastal Program (LCP) is available for review at the Long Beach Office of the Coastal Commission or at the City of Newport Beach Planning Department. The City of Newport Beach Planning Department is located at 3300 Newport Boulevard in Newport Beach. **Patrick Alford** is the contact person for the City's Planning Division, and he may be reached by calling **(949) 644-3235**.

EXHIBITS

- A. City of Newport Beach City Council Resolution No. 2004-41
 - B. Letter from City of Newport Beach dated July 22, 2005
 - C. Response Letter from Coastal Commission dated August 30, 2005
 - D. Public Correspondence
 - E. City of Newport Beach Coastal Land Use Plan dated May 25, 2004
(Provided with Coastal Commissioner packets)
- Also available on-line at:
<http://www.city.newport-beach.ca.us/Pln/LCP/LCP.htm>

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I. COMMISSION RESOLUTION ON CITY OF NEWPORT BEACH LAND USE PLAN AMENDMENT 1-04

Following a public hearing, staff recommends the Commission adopt the following resolution and findings.

Motion #1

*"I move that the Commission **CERTIFY** the City of Newport Beach Land Use Plan Amendment NPB-MAJ-1-04 as submitted."*

Staff Recommendation for Denial

Staff recommends a **NO** vote. Failure of this motion will result in denial of the land use plan amendment as submitted and adoption of the following resolutions and findings. The motion to certify as submitted passes only upon affirmative vote of a majority of the appointed Commissioners.

Resolution for Denial

The Commission hereby **DENIES** the City of Newport Beach Land Use Plan Amendment 1-04 as submitted and adopts the findings stated below on the grounds that the amendment will not meet the requirements of and is not in conformity with the policies of Chapter 3 of the California Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act as there are feasible mitigation measures and alternatives that would substantially lessen the significant adverse impacts on the environment that will result from certification of the land use plan amendment as submitted.

Motion #2

*"I move that the Commission **CERTIFY** the City of Newport Beach Land Use Plan Amendment NPB-MAJ-1-04 if modified as suggested in this staff report."*

Staff Recommendation for Certification

Staff recommends a **YES** vote. Passage of this motion will result in the certification of the land use plan with suggested modification and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of a majority of the appointed Commissioners.

Resolution for Certification with Suggested Modifications

The Commission hereby certifies the Land Use Plan Amendment NPB-MAJ-1-04 for the City of Newport Beach if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

II. PROCEDURAL PROCESS (LEGAL STANDARD FOR REVIEW)

A. Standard of Review

The standard of review for land use plan amendments is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP amendment if it finds that it meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act. Specifically, Section 30512 states: *“(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.”*

B. Procedural Requirements

Pursuant to Section 13551(b) of Title 14 of the California Code of Regulations, a resolution for submittal of an LUPA must indicate whether the local coastal program amendment will require formal local government adoption after Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513 and 30519. The City of Newport Beach's submittal indicates that this LCP amendment will take effect upon Commission certification.

III. BACKGROUND

The Land Use Plan (LUP) for the City of Newport Beach was effectively certified on May 19, 1982, and subsequently amended multiple times. No implementation plan has ever been submitted. The current submittal is part of the City's effort to achieve LCP certification by comprehensively updating the LUP and preparing an implementation plan to meet the requirements of Senate Bill 516.

Senate Bill 516, passed in 2001, allows the County of Orange to continue to implement its certified LCP for the Irvine/Newport Coast following the area's annexation by the City of Newport Beach. The bill requires the City of Newport Beach to submit to the commission for approval and certification the City's local coastal program for all of the geographic area within the coastal zone and the city's corporate boundaries as of June 30, 2000 on or before June 30, 2003, or 24 months after the annexation, whichever event occurs first. If the City of Newport Beach fails to submit a local coastal program to the commission for approval and certification or does not have an effectively certified local coastal program within six months after the commission's approval of the local coastal program, the City of Newport Beach is required to submit a monthly late fee of one thousand dollars (\$1,000).

NPB-MAJ-1-04
City of Newport Beach LUP Update

Coastal Commission staff met with City staff on August 8, 2001 to develop a strategy for the certification of the Local Coastal Program (LCP) within the time limits specified by Senate Bill 516. City staff submitted copies of all coastal-related ordinances, policies, and programs for Coastal Commission staff to review. After thoroughly reviewing the currently certified LUP, Coastal Commission staff concluded that the LUP required a comprehensive update to address inadequacies and bring the policies up to date.

The City asserts that every effort was made to meet the deadline specified in SB 516, but that it did not have sufficient time to update the LUP and prepare a new implementation plan (IP) while meeting the public participation requirements of Section 30503 of the Coastal Act. The City focused its efforts on completing the LUP update with extensive public participation and submitting it to the Commission. The City intends to finalize and submit the implementation plan after certification of the LUP.

On July 2, 2004, staff for the South Coast District of the Coastal Commission received from the City of Newport Beach, Land Use Plan Amendment (LUPA) NPB-MAJ-1-04. The proposed amendment consists of a comprehensively updated LUP that is intended to replace the currently certified LUP. On July 14, 2004, Coastal Commission staff notified the City of Newport Beach that the submittal was incomplete and that additional information would be required to complete the submittal. Pursuant to Section 30510(b) of the Coastal Act, the submittal was deemed to be complete and in proper order for filing as of July 23, 2004.

Pursuant to Sections 30512 and 30514 of the Coastal Act, an amendment to a certified LCP affecting the land use plan must be acted on by the Commission within 90 days after the submittal request has been deemed to be in proper order for filing. The 90th day for this LCP amendment was October 21, 2004. In order to be heard within this allotted time period, the amendment request would have had to have been scheduled for hearing by the October 6-8, 2004 Commission meeting in San Diego. Section 30517 of the Coastal Act allows the Commission to extend, for good cause, the 90-day time limit for up to one year. Commission staff requested an extension to allow additional time to evaluate the submittal and consult with the City of Newport Beach on the Land Use Plan update. The Commission granted the extension on September 10, 2004. The last date for Commission action is therefore October 21, 2005.

Commission staff and City staff have worked together over the course of the one-year extension period to clarify policy intent and format. Significant progress has been made toward resolving issues related to ESHA protection, the designation of visitor-serving commercial areas, and the inclusion of development standards. Although many issues have been resolved, substantive differences remain, including those relating to coastal bluff regulations and wetland delineation. City staff has generated many of the suggested modifications contained herein, either in response to Commission staff concerns or to supplement various policy sections. Wherever possible, Commission staff has incorporated the City's suggestions and language changes.

IV. SUMMARY OF PUBLIC PARTICIPATION

On January 8, 2002, the City Council established the Local Coastal Program Certification Committee (LCPCC) to provide direction and oversight to staff during the LCP certification process. The LCPCC consists of three City Council members and three Planning Commission members. Over the following two years, the LCPCC held sixteen public meetings as they reviewed drafts of the Coastal Land Use Plan (CLUP). Both the Planning Commission and City Council received status reports on the LCPCC at their regular public meetings.

A screen check draft of the CLUP was completed by November 2002 and was distributed to the LCPCC and City staff for review. The first public review draft of the CLUP was completed in April 2003. This draft was submitted to the Planning Commission, Harbor Commission, General Plan Advisory Committee, Environmental Quality Affairs Committee, Economic Development Committee, and the Coastal Commission staff. Copies of the draft were also placed at each branch of the Newport Beach Public Library, and copies were available for loan or purchase at City Hall. In addition to comments received from the City's commissions and advisory committees, comments were received from the Sierra Club, Mariner's Mile Business Owners Association, Surfrider Foundation, and individual members of the public.

Through the remainder of 2003, the CLUP was revised to respond to the comments received on the April Draft CLUP. During this time, staff gave updates and presentations to commissions, advisory committees and civic groups. This included a presentation to the *Speak Up Newport* forum, which aired on local cable public access channels.

The LCPCC completed work on the draft CLUP on January 21, 2004. Copies of CLUP were mailed to the Cities of Costa Mesa, Huntington Beach, Laguna Beach, and Irvine and to the County of Orange. A notice of availability was mailed to over 200 community and business associations, advocacy groups, governmental agencies, and individuals. Copies of the draft CLUP were available for review at the Planning Department office at City Hall and at all branches of the Newport Beach Public Library. Copies were also available at the Planning Department office for a two-week loan or purchase. The entire draft CLUP was available in PDF format at the City of Newport Beach Internet site at <http://www.city.newport-beach.ca.us/Pln/LCP/LCP.htm>.

The Planning Commission held the first public hearing on the draft CLUP on March 4, 2004. Notice of this hearing was published in the Daily Pilot and mailed to over 200 community and business associations, advocacy groups, governmental agencies, and individuals, a minimum of 10 days prior to this hearing. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City Internet site. The Planning Commission held additional public hearings on March 18, 2004 and April 22, 2004 before recommending approval of the draft CLUP to the City Council.

NPB-MAJ-1-04
City of Newport Beach LUP Update

The City Council held a public hearing on the draft CLUP on May 25, 2004. Notice of this hearing was published in the Daily Pilot and mailed to over 200 community and business associations, advocacy groups, governmental agencies, and individuals, a minimum of 10 days prior to this hearing. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City Internet site. The City Council approved the CLUP and authorized its submittal to the Coastal Commission for formal review and approval. Formal adoption of the CLUP by the City of Newport Beach will require a separate action by the City Council if the Coastal Commission approves the updated LUP with suggested modifications.

V. SUGGESTED MODIFICATIONS

Staff recommends the following suggested modifications to the proposed LUP amendment be adopted. The language shown in **bold, underlined, italics** represent language that the Commission suggests be added and the language shown in ~~strike-out~~ represents language that the Commission suggests be deleted from the language as originally submitted.

1. Number the maps included in the Land Use Plan.

CHAPTER 1 (INTRODUCTION)

2. 1.1 Purpose

This document establishes the Coastal Land Use Plan of the Local Coastal Program of the City of Newport Beach, prepared in accordance with the California Coastal Act of 1976. The Coastal Land Use Plan sets forth goals, objectives, and policies that govern the use of land and water in the coastal zone within the City of Newport Beach and its sphere of influence, with the exception of Newport Coast and Banning Ranch. **The physical boundaries of the area to which the Coastal Land Use Plan applies are shown on the Coastal Land Use Map, included as Map [Suggested Mod 1].** Newport Coast is governed by the previously certified and currently effective Newport Coast **segment of the Orange County** Local Coastal Program. Banning Ranch is a Deferred Certification Area (DCA) due to unresolved issues relating to land use, **public access** and the protection of coastal resources (see Section 2.2.4).

3. 1.3 General Policies

The following policies shall be applied to achieve the goals and objectives of the Coastal Act in applying the policies of this Coastal Land Use Plan:

1. The policies of Chapter 3 of the Coastal Act (PRC Sections 30200 – ~~30263~~ **30265.5**) shall be the guiding policies of the Coastal Land Use Plan.

- ~~2. When policies within the Coastal Land Use Plan conflict, such conflicts shall be resolved in a manner which on balance is most protective of significant coastal resources.~~

- ~~3.2.~~ Where there are conflicts between the policies set forth in this Coastal Land Use Plan and those set forth in any element of the City's General Plan, zoning, or any other ordinance, the policies of the Coastal

Land Use Plan shall take precedence. However, in no case, shall the policies of the Coastal Land Use Plan be interpreted to allow a development to exceed a development limit established by the General Plan or its implementing ordinances.

3. In the event of any ambiguities or silence in this Coastal Land Use Plan not resolved by (1) or (2) above, or by other provisions of the City's LCP, the Chapter 3 policies of the Coastal Act shall guide interpretation of this Coastal Land Use Plan.

4. This Coastal Land Use Plan is not intended, and shall not be construed, as authorizing the Coastal Commission or City to exercise its power to grant or deny a permit in a manner that will take or damage private property for public use, without the payment of just compensation therefor. This Section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

5. No provision of the Coastal Land Use Plan or the Coastal Act is a limitation on any of the following:

A. On the power of the City to declare, prohibit, and abate nuisances.

B. Except as otherwise limited by state law, on the power of the City to adopt and enforce additional regulations, not in conflict with the Coastal Land Use Plan or the Coastal Act, imposing further conditions, restrictions, or limitations with respect to any land or water use or other activity which might adversely affect the resources of the coastal zone.

4. Section 1.4, last paragraph on page 1-3:

After certification of an LCP, coastal development permit authority is delegated to the appropriate local government. The Coastal Commission retains original permit jurisdiction over certain specified lands, such as submerged lands, tidelands, and public trust lands, and has appellate authority over development approved by local government in specified geographic areas **and for major public works projects and major energy facilities.** In authorizing coastal development permits, the local government must make the finding that the development conforms to the certified LCP. **Furthermore, after certification of the LCP, City actions on applications for Coastal Act authority to conduct certain types of development and development within certain geographic areas, are appealable to the Coastal Commission.**

CHAPTER 2 (LAND USE AND DEVELOPMENT)

5. Section 2.1.1, Planning Study Areas, Planning Study Area 3 (McFadden Square), Modify second paragraph on page 2-7 as follows:

Retail and Service Commercial areas are intended to provide for a broad range of coastal-related and visitor-serving commercial uses. Professional and business offices not providing goods and services to the public, or not ancillary to an otherwise permitted use, are allowed only on the second floor or above. **In the primary visitor-serving core, non-priority commercial uses are prohibited on the ground floor. The McFadden Square primary visitor-serving core is bounded to the west by the first row of properties fronting on 23rd Street, to the north by Balboa Boulevard, to the east by the first row of properties fronting on McFadden Place, and to the south by the sandy beach, excluding properties currently designated and constructed as residential uses.**

6. Section 2.1.1, Planning Study Areas, Planning Study Area 4 (Balboa Village), Modify last paragraph on page 2-8 as follows:

Although the Balboa Village provides a number of businesses that are oriented to visitors of the coastal zone, a wide range of commercial uses need to be permitted in order to maintain year-around economic viability.

However, within the primary visitor-serving core, non-priority commercial uses are prohibited on the ground floor. The Balboa Village primary visitor-serving core is bounded to the west by Adams Street, to the north by the Newport Harbor, to the east by A Street, and to the south by the sandy beach, excluding properties currently designated and constructed as residential uses.

7. Section 2.1.1, Planning Study Areas, Establish new Planning Study Area 7 (Marine Avenue) and insert following text:

Planning Study Area 7 (Marine Avenue). Marine Avenue is a two-block retail district on Balboa Island. Marine Avenue reflects the unique characteristics of the Balboa Island community. Balboa Island is known for its casual and laid-back lifestyle and Marine Avenue serves as its town square. Marine Avenue has a number of small-scale, locally-owned businesses, including restaurants, retail shops, art galleries, and services. This small-town downtown atmosphere has made Marine Avenue a popular visitor destination.

Although Marine Avenue does not have the typical "tourist-driven" mix of shops and businesses, visitors are drawn there to experience a Southern California coastal island community. The number and variety of businesses cannot be supported by the local economy alone and without local support, most of these businesses could not survive year-round. Therefore, the continued success of the retail economy on Marine Avenue is contingent on businesses that serve both local residents and visitors.

The area is designated for Commercial Residential and Public Facilities. Residential uses are permitted in commercial areas on the second floor or above where the ground floor is occupied by a commercial use. Non-priority commercial uses are prohibited on the ground floor. The maximum floor area to land area ratio for commercial-residential development is 1.25.

8. 2.2.1-1 Continue to allow redevelopment and infill development within and adjacent to the existing developed areas in the coastal zone subject to the density and intensity limits **and resource protection policies** of the Coastal Land Use Plan.
9. New Policy (2.2.1-3) **Provide commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads.**
10. Section 2.2.2 In order to ensure that development within the coastal zone is consistent with the LCP **and any applicable policies from Chapter 3 of the Coastal Act**, the City will require a coastal development permit prior to commencement of any development in the coastal zone, with the exceptions of developments in areas where the Coastal Commission retains permit jurisdiction, **developments where an amendment to a Coastal Commission-issued permit is required**, developments determined to be categorically excluded according to the categories and standards established by the Coastal Commission, and developments determined to be excluded from the coastal development permit requirements pursuant to Public Resources Code Section 30610 **and its implementing regulations.** **Development may also be excluded from permit requirements pursuant to Public Resources Code Sections 30005 (b), 30608 and 30600 (e), which address nuisance abatement, vested rights and emergency circumstances, respectively.**
11. 2.2.2-3 Incorporate the terms and conditions of categorical exclusions into the Zoning Code **Implementation Plan.**
12. New Policy (Section 2.2.2) **Implement building design and siting regulations to protect coastal resources and public access through height, setback, floor area, lot coverage, building bulk, and other property development standards of the Zoning Code intended to control building placement, height, and bulk.**
13. 2.2.3-4. **Provide a graphical** ~~Depict~~ **representation of** the terms of the **categorical exclusion order by depicting the subject** properties covered by categorical exclusions on the Exclusion Areas **a Permit and Appeal Jurisdiction Map** **and incorporate into the Implementation Plan. In case a conflict exists between the Permit and Appeal Jurisdiction Map and**

the text of the categorical exclusion order, the text of the categorical exclusion order shall govern the terms of the exclusion.

14.2.2.4 Banning Ranch shall remain a deferred certification area until such time as the future land uses for the property are resolved and policies are adopted to address the future of the oil and gas operations, **public access**, and the protection of the coastal resources on the property.

15.2.2.5-1 Legally established nonconforming structures may be maintained and repaired, **as specified by the terms of this policy**. Interior alterations, structural alterations, and additions shall be limited as follows. **Individual project review will determine when a coastal development permit is required.**

1. Nonstructural interior alterations shall not exceed 50 percent of the replacement cost of a nonconforming structure.
2. Alteration of more than 25 percent of the structural elements of a nonconforming structure shall be subject to discretionary review and approval by the City.
3. Additions shall be permitted to structures that are legally nonconforming due to reasons other than for parking, open space/**resource issues**, floor area, or building bulk. Additions of more than 25 percent of the gross floor area of a nonconforming structure shall be subject to discretionary review and approval by the City.
4. No alterations or additions to a nonconforming structure shall increase the degree of the structure's nonconformity.
5. **When proposed development would involve demolition or replacement of 50 percent or more of the exterior walls of an existing structure, the entire structure must be made to conform with all current development standards and applicable policies of the Coastal Land Use Plan.**

16. New Policy (Section 2.3.1). **Protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.**

17. New Policy (Section 2.3.1). **Where feasible, reserve upland areas necessary to support coastal recreational uses for such uses.**

18. New Policy (Section 2.3.1). **Prohibit the following non-priority commercial uses on the ground floor of properties within the primary**

visitor-serving areas of McFadden Square (PSA 3) and Balboa Village (PSA 4), and along Marine Avenue (PSA 7):

- 1. Daycare**
- 2. Residential Care**
- 3. Building Materials and Services**
- 4. Funeral and Internment Services**
- 5. Laboratories**
- 6. Health/Fitness Clubs**
- 7. Research and Development**
- 8. SRO Residential Hotels**
- 9. Industry**
- 10. Mining and Processing**
- 11. Clubs and Lodges**
- 12. Government Offices**
- 13. Religious Assembly**
- 14. Major Utilities**
- 15. Animal Hospitals**
- 16. Maintenance and Repair Services**
- 17. Offices, Business and Professional (not serving visitors)**
- 18. Vehicle Sales**
- 19. Vehicle Storage**

19.2.3.2-1. Continue to use public beaches for public recreational uses and prohibit commercial uses on beaches that interfere with public access and enjoyment of coastal resources.

20.2.4.1-5 **Protect and** ~~Encourage and maintain~~ facilities that serve marine-related businesses and industries unless the demand for such facilities no longer exists **present and foreseeable future demand for such facilities are already adequately provided for in the area. Encourage coastal-dependent industrial facilities to locate or expand within existing sites and allowed reasonable long-term growth.**

21.2.5.2-1. Continue to ~~a~~Administer the use of tidelands and submerged lands in a manner consistent with the tidelands trust and **all applicable laws, including Chapter 70 of the Statutes of 1927,** the Beacon Bay Bill (Chapter 74, Statutes of 1978), SB 573 (Chapter 317, Statutes of 1997), AB 3139 (Chapter 728, Statutes of 1994), and Chapter 715, Statutes of 1984 **and the Coastal Act.**

22.2.5.2-2. Give full consideration to **Promote** the public's right of access to the ocean, beach, and bay and to the provision of coastal dependent uses adjacent to the water in the leasing or re leasing of publicly owned land.

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- 23.2.5.2-3. ~~Give full consideration to~~ **Evaluate and ensure** the consistency of the proposed use with the public trust restrictions and the public interest at the time any tideland lease is re-negotiated or renewed.
24. New Policy (Section 2.6): **Where feasible, locate new hazardous industrial development away from existing developed areas.**
25. New Policy (Section 2.6): **Encourage coastal-dependent industrial facilities to locate or expand within existing sites and permit reasonable long-term growth where consistent with the Coastal Land Use Plan.**
- 26.2.6-1 **In the areas designated for industrial land uses, give priority to**
~~Coastal-dependent and coastal-related industrial uses shall have priority~~
over other industrial uses on or near the shoreline.
- 27.2.6-2. ~~Prohibit new onshore oil and gas development facilities, except as may be necessary in conjunction with the operation of the West Newport Oil Field, including the City of Newport Beach oil facilities.~~
- 28.2.6-3. ~~Prohibit the construction of onshore oil processing, refining or transportation facilities, including facilities designed to transport oil produced from offshore tracts, with the exception of slant drilling from onshore oil fields.~~
29. New Policy (Section 2.8.1): **Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.**
30. New Policy (Section 2.8.2): **Require overnight visitor-serving facilities in susceptible areas to provide tsunami information and evacuation plans.**
31. New Policy (Section 2.8.2): **Periodically review and update tsunami preparation and response policies/practices to reflect current inundation maps and design standards.**
- 32.2.8.3-3. Develop and implement shoreline management plans for shoreline areas subject to wave hazards and erosion. Shoreline management plans should provide for the protection of private property **existing development**, public improvements, coastal access, public opportunities for coastal recreation, and coastal resources. **Plans must evaluate the feasibility of hazard avoidance, restoration of the sand supply, beach nourishment and planned retreat.**
- 33.2.8.6-5. Permit revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other structures altering natural shoreline processes

or retaining walls when required to serve coastal-dependent uses or to protect existing **principal** structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, **unless a waiver of future shoreline protection was required by a previous coastal development permit.**

- 34.2.8.6-7. Discourage shoreline protective devices on public land to protect private property/development. Site and design any such protective devices as far landward as possible. **Such protective devices may be considered only after hazard avoidance, restoration of the sand supply, beach nourishment and planned retreat are exhausted as possible alternatives.**
- 35.2.8.6-9. Require property owners to record a waiver of future shoreline protection for new development during the economic life of the structure (75 years) as a condition of approval of a coastal development permit for new development on a beach, or shoreline **or bluff** that is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff. Shoreline protection may be permitted to protect existing structures that were legally constructed prior to the certification of the LCP, unless a waiver of future shoreline protection was required by a previous coastal development permit.
- 36.2.8.8-2. Site and design new development to avoid **fire hazards and** the need to extend fuel modification zones into sensitive habitats.
37. New Policy (2.9.3): **Prohibit new development that would result in restrictions on public parking that would impede or restrict public access to beaches, trails or parklands, (including, but not limited to, the posting of “no parking” signs, red curbing, and physical barriers), except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety.**
38. New Policy (2.9.3): **If public parking restrictions are allowed to protect public safety, require new development to provide an equivalent quantity of public parking nearby as mitigation for impacts to coastal access and recreation, where feasible.**
- 39.2.9.3-6. ~~Continue to r~~Require new development to minimize curb cuts to protect on-street parking spaces. **Close curb cuts to create public parking wherever feasible.**
40. New Policy (Section 2.9): **Require that all proposed development maintain and enhance public access to the coast by providing adequate parking pursuant to the off-street parking regulations of the Zoning Code in effect as of [date of Commission action].**

41. New Policy (Section 2.9): **Periodically review and update off-street parking requirements to ensure that new development provides off-street parking sufficient to serve approved uses.**

CHAPTER 3 (PUBLIC ACCESS AND RECREATION)

- 42.3.1.1-1. Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, **coastal waters, tidelands,** coastal parks, and trails.
- 43.3.1.1-11. Require **a direct dedication or** an Offer to Dedicate (OTD) an easement for lateral public access for all new shorefront development causing or contributing to adverse public access impacts. **Such dedication or easement shall extend from the limits of public ownership (e.g. mean high tide line) landward to a fixed point seaward of the primary extent of development (e.g. intersection of sand with toe or top of revetment, vertical face of seawall, dripline of deck, or toe of bluff).**
- 44.3.1.1-12. Require **a direct dedication or** an Offer to Dedicate (OTD) an easement for vertical access in all new development projects causing or contributing to adverse public access impacts, unless adequate access is available nearby. **Vertical accessways shall be a sufficient size to accommodate two-way pedestrian passage and landscape buffer and should be sited along the border or side property line of the project site or away from existing or proposed development to the maximum feasible extent.**
45. New Policy (Section 3.1.1) **Require all direct dedications or OTDs for public access to be made to a public agency, private association or other appropriate entity that will operate the accessway on behalf of the public. Require accessways to be opened to the public once an appropriate entity accepts responsibility for maintenance and liability.**
46. New Policy (Section 3.1.1) **Implement building design and siting regulations to protect public access through setback and other property development regulations of the Zoning Code that control building placement.**
47. New Policy (Section 3.1.1) **Require new development on ocean-fronting, residentially zoned properties located between the Santa Ana River Jetties and the Newport Harbor West Jetty to conform to the setback requirements of the Zoning Code in effect as of [date of Commission action] to prevent impacts to public access.**
48. New Policy (Section 3.1.1) **Where there is substantial evidence that prescriptive rights of access to the beach exist on a parcel,**

development on that parcel must be designed, or conditions must be imposed, to avoid interference with the prescriptive rights that may exist or to provide alternative, equivalent access.

49. New Policy (Section 3.1.1) **Encourage the acceptance, improvement and opening of OTDs to the public by the City, a public agency, a private association, or other appropriate entity.**

50. New Policy (Section 3.1.1) **Encourage the creation of new public vertical accessways where feasible, including Corona del Mar and other areas of limited public accessibility.**

51. Section 3.1.1 Add new symbol to Coastal Access Map to reflect potential public access points.

52. 3.1.3-9 (A) Maintain 33 street ends between 36th Street and Summit to provide an average of 2 parking spaces per street, **and additional spaces where feasible.**

53. New Policy (After 3.1.4-7) **Limit bulkhead expansion or encroachment into coastal waters to the minimum extent necessary to repair, maintain, or replace an existing bulkhead and do not allow the backfill to create new usable residential land areas.**

54. 3.1.5-1. Prohibit new development that incorporate gates, guardhouses, barriers or other structures designed to regulate or restrict access where they would inhibit public access to and along the shoreline and to beaches, coastal parks, trails, or coastal bluffs ~~when there is substantial evidence that prescriptive rights exist.~~

55. 3.1.5-2. Prohibit new private streets, or the conversion of public streets to private streets, where such a conversion would inhibit public access to and along the shoreline and to beaches, coastal parks, trails, or coastal bluffs ~~when there is substantial evidence that prescriptive rights exist.~~

56. 3.1.6-1. Prohibit the establishment of new preferential parking districts in the coastal zone except ~~in areas~~ where such restrictions would not have a direct impact to coastal access, including the ability to use public parking, ~~or where no other practical or feasible alternative exists to protect the public health, safety or general welfare.~~

57. 3.1.6-5. Limit the number of preferential parking permits issued per household **to reduce potential adverse impacts to public access.**

58. New Policy (Section 3.2): **Provide adequate park and recreational facilities to accommodate the needs of new residents when allowing new development.**
59. New Policy (Section 3.3.1) **Develop and implement a signage program to assist boat owners/operators and the public to locate public launching facilities.**
60. New Policy (Section 3.3.2) **Provide a variety of slip types reflecting State and regional demand for slip size and affordability.**
61. 3.3.3-5. Develop strategies to preserve uses that provide essential support for the vessels berthed or moored in the Harbor. ~~The strategies must be feasible, cost effective, and respect the property rights of waterfront owners and lessees. The strategies may include parking waivers, development transfers, density bonuses and voluntary purchase of conservation easements.~~

CHAPTER 4 (COASTAL RESOURCE PROTECTION)

62. Page 4-2 (First full paragraph) ~~The California Department of Fish and Game (CDFG) California Natural Diversity Database (CNDDDB) identifies natural communities that are considered rare because of their highly limited distribution. These communities may or may not contain rare, threatened, or endangered species. The following CNDDDB terrestrial natural communities~~ **terrestrial (non-marine) natural communities** ~~are known to occur within the coastal zone in Newport Beach and the City's sphere of influence:~~
63. Page 4-2 (Insert after bulleted list) **The California Department of Fish and Game's (CDFG) "List of California Terrestrial Natural Communities Recognized by the California Natural Diversity Database" (CNDDDB) provides an inventory of California's natural communities and identifies those that are considered rare because of their highly limited distribution. These rare communities may or may not contain individual species that are rare, threatened, or endangered.**
64. Pages 4-3 through 4-4 (narrative) In determining whether a habitat area meets the statutory definition of ESHA contained in Section 30107.5 of the Coastal Act, the following attributes need to be taken into consideration:
- ~~The Identification of CDFG/CNDDDB natural communities.~~ **The presence of natural communities that have been identified as rare by the California Department of Fish and Game.**

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- The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law.
- **The presence or potential presence of plant or animal species that are not listed under State or Federal law, but for which there is other compelling evidence of rarity, such as designation as a 1B or 2 species by the California Native Plant Society.**
- The presence of coastal streams or wetlands.
- The degree of habitat integrity/ **and** connectivity **to other natural areas.**

~~While most of the above habitat characteristics can be documented from a variety of sources, habitat integrity/connectivity is a more subjective measure of biological value, which considers various attributes affecting a given habitat's quality in a particular geographic area. Attributes contributing to or detracting from habitat integrity include:~~

- ~~▪ Patch size and connectivity. Large "pieces" of habitat adjacent to or contiguous with similar or related habitats are particularly useful for more mobile species that rely on larger territories for food and cover.~~
- ~~▪ Presence of invasive/non-native species. Invasive/non-native species often provide poorer habitat for wildlife than native vegetation. Proliferation of exotic plant species alters ecosystem processes and threatens certain native species with extirpation.~~
- ~~▪ Disturbance. This includes disturbance due to human activities such as access (trails), dumping, vegetation removal, development, pollution, etc.~~
- ~~▪ Proximity to development. Habitat areas bordering development provide marginal habitat values to wildlife due to impacts from negative edge effects. This proximity presents the possibility of secondary effects to the habitat due to spillover or human intrusion. Deterioration of habitat results from intrusion of lighting, non-native invasive plant species, domestic animals, and human activity.~~
- ~~▪ Fragmentation. The converse of "connectedness", habitat fragmentation is the result of development of large blocs of undisturbed, contiguous habitat. The resulting breaking up of these areas into isolated, disjunct parcels can create barriers to migration, reduce wildlife food and water resources and generally compress territory size to reduce existing wildlife populations to non-viability.~~

Fragmentation increases negative edge effects, whereby the interior area of habitat is affected by the different conditions of the disturbance on its edges. The smaller a particular habitat is, the greater the proportion of its area which experiences the edge effect, and this can lead to dramatic changes in plant and animal communities. In general, loss of habitat produces a decline in species total population size, and fragmentation of habitat can isolate small subpopulations from each other.

If, based on site-specific analysis by a qualified biologist, a habitat area is degraded beyond the point of restoration or is isolated in a manner that it no longer has habitat value or a special nature or role in the ecosystem, the habitat area does not meet the statutory definition of ESHA contained in Section 30107.5 of the Coastal Act. Therefore, such habitat areas do not warrant the special land use and development restrictions of Section 30240 of the Coastal Act.

Several of the natural communities that occur in Newport Beach are designated rare by the CDFG and are easily disturbed or degraded by human activity and therefore are presumed to meet the definition of ESHA under the Coastal Act. These include southern dune scrub, southern coastal bluff scrub, maritime succulent scrub, southern maritime chaparral, southern willow scrub, southern cottonwood willow riparian forest, southern arroyo willow forest, southern black willow forest, southern sycamore alder riparian woodland, and southern coastal purple needlegrass grassland.

Although not all riparian habitat types are rare throughout the state, in southern California over 90% of the original riparian habitats had been lost to development by 1989. All remaining native riparian habitats in southern California, including southern coast live oak riparian forest, meet the definition of ESHA both because of their rarity and because of their important roles in the ecosystem. For example, many species of birds nest and roost in riparian habitat but forage in adjacent coastal sage scrub and chaparral.

Another important habitat within the City of Newport Beach is coastal sage scrub (CSS). Although CSS has suffered enormous losses in California (estimates are as high as 85%), there are still thousands of acres in existence and this community type is no longer listed as rare by CDFG. Nevertheless, where CSS occurs adjacent to coastal salt marsh or other wetlands, or where it is documented to support or known to have the potential to support rare species such as the coastal California gnatcatcher, it meets the definition of ESHA because of its especially valuable role in the ecosystem. CSS is important transitional or "edge" habitat adjacent to saltmarsh, providing important functions

such as supporting pollinators for wetland plants and essential habitat for edge-dependent animals like several species of butterflies that nectar on upland plants but whose caterpillars require wetland vegetation. CSS also provides essential nesting and foraging habitat for the coastal California gnatcatcher, a rare species designated Threatened under the Federal Endangered Species Act.

Wetland habitats with the City of Newport Beach that may meet the definition of ESHA include coastal brackish marsh, coastal freshwater marsh, southern coastal salt marsh, southern hardpan vernal pools, freshwater seeps, and alkali meadows.

Areas within the City of Newport Beach that are dominated by one of the habitats discussed above are presumed to be ESHA, unless there are strong site-specific reasons to rebut that presumption. Factors that should be considered when making site-specific assessments include:

- Patch size and connectivity. Very small patches of habitat that are effectively isolated from other natural areas may lose many of their natural ecological functions. Functional patch size is dependent upon both the ecological needs of the species of importance supported by the habitat and the spatial scale of the habitat. For example, what is isolated for a small mammal may not be for a bird and what is small for a coyote may not be for some insects.
- Dominance by invasive, non-native species. Non-native species often provide poorer habitat for wildlife than native vegetation and proliferation of exotic plant species alters ecosystem processes and may threaten certain native species with extirpation. However, there are probably no habitats in southern California that have not been invaded by exotic species, and the remaining stands of native grassland are almost always dominated by non-native annual species. Only where exotic species are so overwhelmingly dominant that the native community can no longer perform its functions in the ecosystem should the presence of exotic species rebut the presumption of ESHA.
- Disturbance and proximity to development. Disturbance is the negative effect of human activities such as dumping, vegetation removal, development, pollution, etc. Habitat areas bordering development may be subject to impacts from negative edge effects, such as lighting, non-native invasive plant species, domestic animals, and human activity. The negative effects of

disturbance are strongest immediately adjacent to development and decline with distance from the edge. However, where very small patches of habitat are effectively surrounded by development, these impacts may be severe. In general, disturbance by itself is not enough to rebut the finding of ESHA. Disturbance that is clearly reversible (e.g., presence of trash or illegal dumping) is not determinative.

- **Fragmentation and isolation. Where there are large areas of more-or-less continuous development, native communities may be reduced to small islands of habitat that are distant from other natural habitats. This fragmentation and isolation can create barriers to migration, reduce wildlife food and water resources and generally compress territory size to reduce existing wildlife populations to non-viability. The smaller a particular habitat patch is, the greater the proportion of its area that experiences negative edge effects.**

Where the habitats discussed above occur in the City of Newport Beach the presumption is that they are ESHA and the burden of proof is on the property owner or project proponent to demonstrate that that presumption is rebutted by site-specific evidence. However, if quantitative data gathered by a qualified biologist demonstrates that a habitat area is degraded beyond the point of restoration, or that it is not rare and is so small and isolated that it no longer has habitat value or a special nature or role in the ecosystem, the habitat area does not meet the statutory definition of ESHA contained in Section 30107.5 of the Coastal Act. Therefore, such habitat areas do not warrant the special land use and development restrictions established for ESHA in this Coastal Land Use Plan.

65. New Policy (Section 4.1.1): **Require development in areas adjacent to environmentally sensitive habitat areas to be sited and designed to prevent impacts that would significantly degrade those areas, and to be compatible with the continuance of those habitat areas.**

66.4.1.1-1. Define any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments as an environmentally sensitive habitat area (ESHA). Using a site-specific survey and analysis by a qualified biologist, evaluate the following attributes when determining whether a habitat area meets the definition of an ESHA:

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A. ~~The Identification of CDFG/CNDDB natural communities.~~ **The presence of natural communities that have been identified as rare by the California Department of Fish and Game.**

B. The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law.

C. The presence or potential presence of plant or animal species that are not listed under State or Federal law, but for which there is other compelling evidence of rarity, such as designation as a 1B or 2 species by the California Native Plant Society.

~~C. D.~~ The presence of coastal streams and wetlands.

~~D. F.~~ The degree of habitat integrity/ **and** connectivity **to other natural areas.**

Attributes to be evaluated when determining a habitat's integrity/connectivity include the habitat's patch size and connectivity, **dominance by** ~~the presence of~~ invasive/non-native species, the level of disturbance, the proximity to development, and the level of fragmentation **and isolation.**

Existing developed areas and **existing** fuel modification areas required by the City of Newport Beach Fire Department or the Orange County Fire Authority for existing, legal structures do not meet the definition of ESHA.

67.4.1.1-2 Require a site-specific survey and analysis prepared by a qualified biologist as a filing requirement for coastal development permit applications where development would occur within or adjacent to areas identified as a potential ESHA. **Identify ESHA as habitats or natural communities listed in Section 4.1.1 that possess any of the attributes listed in Policy 4.1.1-1. The ESA's depicted on Map [Suggested Mod 1] shall represent a preliminary mapping of areas containing potential ESHA.**

68.4.1.1-3. ~~Design and site new development, including landscaping, to~~ **P**rotect ESHAs against any significant disruption of habitat values.

69.4.1.1-5. Limit uses within ESHAs to only those uses that are dependent on such resources, ~~except where application of such a limitation would result in a taking of private property. If the application of ESHA policies would likely constitute a taking of private property, then a non-resource dependent use shall be allowed on the property, provided development is limited to the minimum amount necessary to avoid a taking and the development is consistent with all other applicable resource protection policies.~~

- 70.4.1.1-6 **Limited** ~~Public~~ access improvements and **minor** educational, interpretative and research facilities are **activities and development may be considered resource dependent uses. Measures, including, but not limited to, trail creation, signage, placement of boardwalks, and fencing, shall be implemented as necessary to protect ESHA.**
71. New Policy (Section 4.1.1) **Prohibit new development that would necessitate fuel modification in ESHA.**
72. New Policy (After 4.1.1-7) **Provide buffer areas around ESHAs and maintain with exclusively native vegetation to serve as transitional habitat and provide distance and physical barriers to human and domestic pet intrusion.**
- 73.4.1.1-8. Maintain a **Require** buffers **areas** of sufficient size to ensure the protection of ESHAs **the biological integrity and preservation of the habitat they are designed to protect. Terrestrial ESHA shall have a minimum buffer width of 50 feet wherever possible. Smaller ESHA buffers may be allowed only where it can be demonstrated that 1) a 50-foot wide buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the ESHA given the site-specific characteristics of the resource and of the type and intensity of disturbance.**
74. New Policy (Section 4.1.1) **Require mitigation in the form of habitat creation or substantial restoration for allowable impacts to ESHA and other sensitive resources that cannot be avoided through the implementation of siting and design alternatives. Priority shall be given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA.**
75. New Policy (Section 4.1.1) **Apply the following mitigation ratios for allowable impacts to upland vegetation: 2:1 for coastal sage scrub; 3:1 for coastal sage scrub that is occupied by California gnatcatchers or significant populations of other rare species; 3:1 for rare community types such as southern maritime chaparral, maritime succulent scrub; native grassland and 1:1 for southern mixed chaparral. The ratios represent the acreage of the area to be restored/created to the acreage impacted.**
76. New Policy (Section 4.1.1) **For allowable impacts to ESHA and other sensitive resources, require monitoring of mitigation measures for a period of sufficient time to determine if mitigation objectives and performance standards are being met. Mid-course corrections shall be**

implemented if necessary to meet the objectives or performance standards. Require the submittal of monitoring reports during the monitoring period that document the success or failure of the mitigation. To help insure that the mitigation project is self-sustaining, final monitoring for all mitigation projects shall take place after at least three years with no remediation or maintenance activities other than weeding. If performance standards are not met by the end of the prescribed monitoring period, the monitoring period shall be extended or the applicant shall submit an amendment application proposing alternative mitigation measures and implement the approved changes. Unless it is determined by the City that a differing mitigation monitoring schedule is appropriate, it is generally anticipated that monitoring shall occur for a period of not less than five years.

77. Section 4.1.3 (Narrative on page 4-11):

Newport Beach has several relatively large, undeveloped areas that contain natural habitats and may be capable of supporting sensitive biological resources. These areas are designated as environmental study areas to define them geographically, provide an overview of known and potential biological resources, identify potential threats to those resources, and propose potential mitigation measures.

The following areas are designated as environmental study areas:

1. Semeniuk Slough (Santa Ana River Marsh)
2. North Star Beach
3. West Bay
4. Upper Newport Bay Marine Park and DeAnza/Bayside Marsh Peninsula
5. San Diego Creek
6. Eastbluff Remnant
7. Mouth of Big Canyon
8. Newporter North
9. Buck Gully
10. Morning Canyon
11. Newport Beach Marine Conservation Area
12. Castaways
13. Kelp Beds in Newport Harbor Entrance Channel

Most of these study areas are protected as parks, conservation areas, nature preserves, and other open space areas. Nevertheless, the natural habitats in each of these study areas are subjected to various potential impacts from the surrounding urban environment. Potential adverse impacts and mitigation measures to reduce those impacts **are** identified in the narratives below and

summarized in Table 4.1-1 (Environmental Study Area Environmental Impacts and Mitigation Measures).

Portions of the environmental study areas listed above are known to contain habitat that constitutes Environmentally Sensitive Habitat Area (ESHA). As such, they will be subject to more stringent development controls and resource protection measures. Within these study areas, those natural communities/habitats identified in Section 4.1.1 are presumed to be ESHA, unless there is compelling site-specific evidence to the contrary. As is evident from the descriptions provided below, large portions of these environmental study areas support one or more community types that meet the definition of ESHA.

- 78.4.1.3-1 Utilize the following mitigation measures to reduce the potential for adverse impacts to ESA natural habitats from the potential impacts **sources including, but not limited to, those** identified in Table 4.1.1:...
79. Modify Table 4.1.1 to include "POLICY 4.1.3-1 (N)" within the column labeled "Mitigations to Reduce the Potential Impacts of Identified Threats" for each ESA.
- 80.4.1.3-1 (A) Require removal of unauthorized bulkheads, docks and patios or other structures that impinge upon **impact** wetlands **or other sensitive habitat areas**.
- 81.4.1.3-1 (B) Where pedestrian access is permitted, control public access **avoid adverse impacts** to sensitive areas **from pedestrian traffic** through the use of well-defined footpaths, boardwalks, protective fencing, signage, and similar methods.
- 82.4.1.3-1 (E) Limit encroachments into wetlands to development that is consistent with the Section 30233 of the Coastal Act **and Policy 4.2.3-1 of the Coastal Land Use Plan** (see Section 4.2 — Wetlands and Deepwater Areas) and mitigate any wetlands losses.
- 83.4.1.3-1 (N) Monitor for **Prohibit** invasive species **and require removal in new development**; remove if necessary.
- 84.4.1.3-2 Prepare natural habitat protection overlays for Buck Gully ESA **and** Morning Canyon ESA for the purpose of providing standards to ensure both the protection **and restoration** of the natural habitats in these areas ~~and of private property rights~~. Include in the overlays standards for the placement of structures, native vegetation/fuel modification buffers, and erosion and sedimentation control structures.

85. 4.1.3-10. Resource protection policies are not intended to prevent public agencies and private property owners from maintaining drainage courses and facilities, sedimentation basins, trails, access roads, public infrastructure, and other related facilities in a safe and effective condition with minimal impact on the environment, nor are they intended to prohibit public infrastructure when the environmental process demonstrates that adverse impacts can be mitigated, or that the benefits outweigh the adverse impacts. However, any such infrastructure installed in an ESHA or wetland must be in conformance with the uses designated in Section 30240 and Section 30233 of the Coastal Act, respectively. **Routine maintenance of drainage courses and facilities, sedimentation basins, trails, access roads, public infrastructure, and other related facilities may be allowed if carried out in accordance with the resource protection policies of the Coastal Land Use Plan.**

86. 4.1.4-5 **Where applicable** Continue to require **eelgrass and** *Caulerpa taxifolia* protocol surveys **to be conducted** as a condition of City approval for projects in Newport Bay **in accordance with operative protocols of the Southern California Eelgrass Mitigation Policy and Caulerpa taxifolia Survey Protocols** and immediately notify the SCCAT when found.

87. New Policy (Section 4.2.1): **Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.**

88. Section 4.2.2 (Narrative on page 4-43):

Although vegetation is often the most readily observed parameter, sole reliance on vegetation or either of the other parameters as the determinant of wetlands can sometimes be misleading. Many plant species can grow successfully in both wetlands and non-wetlands, and hydrophytic vegetation and hydric soils may persist for decades following alteration of hydrology that will render an area a non-wetland. In situations where ambiguities in wetland characteristics exist, the judgment of a qualified biologist may be required to determine whether an area meets the definition of a wetland. The presence or absence of more than one parameter may be considered along with other factors, such as recent precipitation patterns, topography, drainage patterns, and adjacency to identified wetlands.

89. 4.2.2-1. Define wetlands as areas where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to

support the growth of hydrophytes. Such wetlands can include areas where vegetation is lacking and soil is poorly developed or absent as a result of frequent drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentration of salts or other substances in the substrate. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds and impoundments), nor marine or estuarine areas below extreme low water of spring tides, ~~nor vernal wet areas where the soils are not hydric.~~

90.4.2.2-2. ~~Where ambiguities in wetland characteristics exist, the presence or absence of more than one wetland parameter may be considered along with other factors, including recent precipitation patterns, topography, drainage patterns, and adjacency to identified wetlands, to determine whether an area meets the definition of a wetland and to delineate wetland boundaries.~~

91.4.2.2-4. Require buffer areas around wetlands of a sufficient size to ensure the biological integrity and preservation of the wetland **that they are designed to protect. Wetlands shall have a minimum buffer width of 100 feet wherever possible. Smaller wetland buffers may be allowed only where it can be demonstrated that 1) a 100-foot wide buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the wetland given the site-specific characteristics of the resource and of the type and intensity of disturbance.**

92.4.2.3-1 (B) Construction or expansion of coastal-dependent industrial facilities, including commercial fishing facilities, ~~haul-out boat yards,~~ and commercial ferry facilities.

93.4.2.3-1 (D) In open coastal waters, other than wetlands, including estuaries **and streams**, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, ~~haul-out boat yards,~~ and pleasure ferries, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

94.4.2.3-5 (C) Dredged material not suitable for beach nourishment **or other permitted beneficial reuse** shall be disposed of offshore at a designated U.S. Environmental Protection Agency disposal site **or at an appropriate upland location.**

95.4.2.3-8. Issue **Seek** permits authorizing maintenance dredging under and around residential piers and floats subject to compliance with all conditions to the current Regional General Permit, including grain size requirements, availability of suitable dredge disposal site, and periodic bioassays.

96.4.2.3-9. Require the following minimum mitigation measures if a project involves diking or filling of a wetland:

- A. If an appropriate ~~restoration~~ **mitigation** site is available, the applicant shall submit a detailed ~~restoration~~ plan which includes provisions for **(1) acquiring title to the mitigation site; (2) "in-kind" wetland restoration or creation where possible; (3) where "out-of-kind" mitigation is necessary, restoration or creation of wetlands that are** ~~purchase and restoration of an equivalent area of equal or greater biological productivity~~ **to the wetland that was filled or dredged; and (4) dedication of the restored or created land wetland and buffer** to a public agency, or otherwise permanently restricts ~~ion of its~~ **their** use for ~~to~~ open space purposes.

Adverse impacts shall be mitigated at a ratio of 3:1 for impacts to seasonal wetlands, freshwater marsh and riparian areas, and at a ratio of 4:1 for impacts to vernal pools and saltmarsh (the ratio representing the acreage of the area to be restored/created to the acreage of the area diked or filled), unless the applicant provides evidence establishing, and the approving authority finds, that restoration or creation of a lesser area of wetlands will fully mitigate the adverse impacts of the dike or fill project. However, in no event shall the mitigation ratio be less than 2:1 unless, prior to the development impacts, the mitigation is completed and is empirically demonstrated to meet performance criteria that establish that the created or restored wetlands are functionally equivalent or superior to the impacted wetlands. The mitigation shall occur on-site wherever possible. Where not possible, mitigation should occur in the same watershed. The **mitigation** site shall be purchased **and legally restricted and/or dedicated** before the dike or fill development may proceed.

- B. The applicant may, in some cases, be permitted to open equivalent areas to tidal action or provide other sources of surface water **in place of creating or restoring wetlands pursuant to paragraph A.** This method of mitigation would be appropriate if the applicant already owns ~~s,ed~~ **or can acquire,** filled, ~~or~~ diked areas which themselves ~~were~~ **are** not environmentally sensitive habitat areas but **which** would become so, if such areas were opened to tidal action or provided with other sources of surface water.
- C. However, if no appropriate sites under options (A) and (B) are available, the applicant shall pay an in-lieu fee of sufficient value to an appropriate public agency for the purchase and restoration of an area of equivalent productive value, or equivalent surface area.

This third option would be allowed only if the applicant is unable to find a willing seller of a potential restoration site. The public agency may also face difficulties in acquiring appropriate sites even though it has the ability to condemn property. Thus, the in-lieu fee shall reflect the additional costs of acquisition, including litigation, as well as the cost of restoration. If the public agency's restoration project is not already approved by the City, the public agency may need to be a co-applicant for a permit to provide adequate assurance that conditions can be imposed to assure that the purchase of the mitigation site shall occur prior to issuance of the permit. In addition, such restoration must occur in the same general region (e.g., within the same estuary) where the fill occurred.

97. New Policy (after 4.2.3-10) **Where impacts to wetlands are allowed, require monitoring of mitigation measures for a period of sufficient time to determine if mitigation objectives and performance standards are being met. Mid-course corrections shall be implemented if necessary to meet the objectives or performance standards. Require the submittal of monitoring reports during the monitoring period that document the success or failure of the mitigation. To help insure that the mitigation project is self-sustaining, final monitoring for all mitigation projects shall take place after at least three years with no remediation or maintenance activities other than weeding. If performance standards are not met by the end of the prescribed monitoring period, the monitoring period shall be extended or the applicant shall submit an amendment application proposing alternative mitigation measures and implement the approved changes. Unless it is determined by the City that a differing mitigation monitoring schedule is appropriate, it is generally anticipated that monitoring shall occur for a period of not less than five years.**

98. 4.2.3-11, First sentence. Require that any project that includes diking, filling or dredging of a wetland or estuary, **as permitted pursuant to Policy 4.2.3-1,** must maintain the functional capacity of the wetland or estuary.

99. 4.2.3-12 ~~Require that new development on the waterfront to design and site docking facilities in relationship to the usable water area.~~ **Require new development on the waterfront to design and site docking facilities in relationship to the water's depth and accessibility.**

100. New Policy (Section 4.2.3) **Require dredging and dredged material disposal to be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation.**

101. Narrative (Section 4.2.4): **Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments**

to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

102. New Policy (Section 4.2.4) **Dredged materials suitable for beneficial reuse shall be transported for such purposes to appropriate areas and placed in a manner that minimizes adverse effects on the environment.**
103. New Policy (Section 4.2.4): **Material removed from erosion control and flood control facilities suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.**
104. Section 4.2.5, Narrative, page 4-55, First full paragraph:
The City is developing a conceptual eelgrass mitigation program that will address the establishment of eelgrass acreage baselines for Newport Harbor. An eelgrass acreage baseline for Newport Harbor is needed. The baseline would be the minimum acreage, based on the distribution, density, and productivity, necessary for eelgrass meadows to fulfill their ecological function. Once the baseline is determined, projects may be granted exemptions to the Southern California Eelgrass Mitigation Policy mitigation requirements, provided the eelgrass acreage baseline is maintained. The National Marine Fisheries Service, as the lead agency, would need to incorporate such a provision into Southern California Eelgrass Mitigation Policy and the U.S. Army Corps of Engineers, the Coastal Commission, and the Santa Ana Regional Water Quality Control Board to incorporate the provision into the City's Regional General Permit and into any individual property owner's dredging or dock construction permit that qualifies under future applications. The establishment of a baseline for eelgrass meadows will serve to protect their important ecological function while allowing the periodic dredging that is essential to protect the Newport Harbor's value as a commercial and recreational resource. **The eelgrass mitigation program is conceptual in nature and will need further review and agency approval.**
105. 4.2.5-2 ~~When eelgrass planted in a mitigation area migrates into adjacent areas that did not previously contain eelgrass, further mitigation for dredging those adjacent areas shall not be required.~~
106. 4.2.5-4. ~~Allow successful eelgrass restoration sites to serve as mitigation sites for City projects and as a mitigation bank from which eelgrass~~

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mitigation credits will be issued to private property owners for eelgrass removal resulting from dock and channel dredging projects.

107. New Policy (Section 4.3): **Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.**
108. 4.3.1-3. Establish and protect a long-term funding source for the regular dredging of Upper Newport Bay (~~including the Robinson-Skinner Annuity~~) and dredging of the Lower Newport Bay so that the City and its watershed partners achieve the goals and directives of the Sediment and Nutrient TMDLs adopted for Newport Bay.
109. 4.3.1-5. Require development on steep slopes or steep slopes with erosive soils to implement structural best management practices (BMPs) to prevent or minimize erosion **consistent with any load allocation of the TDMLs adopted for Newport Bay.**
110. 4.3.2-4. Continue to update and enforce the Newport Beach Water Quality Ordinance **consistent with the MS4 Permit.**
111. 4.3.2-14. Whenever possible, divert runoff through planted areas or sumps that recharge the groundwater dry wells and use the natural filtration properties of the earth to prevent the transport of harmful materials directly into recreational **receiving** waters.
112. 4.3.2-23. Require new development applications to include a Water Quality Management Plan (WQMP). The WQMP's purpose is to minimize to the maximum extent practicable dry weather runoff, and runoff from small storms (less than 3/4" of rain falling over a 24-hour period) **and the concentration of pollutants in such runoff** during construction and post-construction from the property.
113. 4.3.3-1. Continue to **Develop and** implement the Sewer System Management Plan and the Sewer Master Plan **sewer system management plans to replace or reline older wastewater lines and upgrade pump stations.**
114. New Policy (Section 4.4.1): **Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons.**
115. 4.4.2-1. Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, **as graphically depicted in Map [Suggested Mod 116].**

116. New Map: Add a graphic depicting the Shoreline Height Limitation Zone.
117. New Policy (Section 4.4.2): **Implement the regulation of the building envelope to preserve public views through the height, setback, floor area, lot coverage, and building bulk regulation of the Zoning Code in effect as of [date of Commission action] that limit the building profile and maximize public view opportunities.**
118. New Policy (Section 4.4.2): **Prohibit projections associated with new development to exceed the top of curb on the bluff side of Ocean Boulevard. Exceptions for minor projections may be granted for chimneys and vents provided the height of such projections is limited to the minimum height necessary to comply with the Uniform Building Code.**
119. Section 4.4.3 Narrative (pages 4-69 through 4-70)

4.4.3 Coastal Bluffs Natural Landform Protection

Newport Beach coastal zone contains a number of distinctive topographic features. The central and northwestern portions of the City are situated on a broad mesa that extends southeastward to join the San Joaquin Hills, commonly known as Newport Mesa. This upland has been deeply dissected by stream erosion, resulting in moderate to steep bluffs along the Upper Newport Bay estuary, one of the most striking and biologically diverse natural features in Orange County. The nearly flat-topped mesa rises from about 50 to 75 feet above mean sea level at the northern end of the estuary in the Santa Ana Heights area, to about 100 feet above sea level in the Newport Heights, Westcliff, and Eastbluff areas.

Along the southwestern margin of the City, sediments flowing from the Santa Ana River and San Diego Creek, the two major drainage courses that transect the mesa, have formed the beaches, sandbars, and mudflats of Newport Bay and West Newport. These lowland areas were significantly modified during the last century in order to deepen channels for navigation and form habitable islands. Balboa Peninsula, a barrier beach that protects the bay, was once the site of extensive low sand dunes.

In the southern part of the City, the San Joaquin Hills rise abruptly from the sea, separated from the present shoreline by a relatively flat, narrow shelf. Originally formed by wave abrasion, this platform (also called a terrace) is now elevated well above the water and is bounded by steep bluffs along the shoreline. The coastal platform occupied by Corona Del Mar ranges from about 95 to 100 feet above sea level.

The bluffs, cliffs, hillsides, canyons, and other significant natural landforms are an important part of the scenic and visual qualities of the coastal zone and are to be protected as a resource of public importance.

Coastal Bluffs

Coastal bluffs are formed by a rapid uplift of the shore relative to sea level. Coastal bluffs are dynamic, evolving landforms. Coastal bluffs can be impacted by processes at both the bottom and top of the cliffs. Pounding by waves during high tide and storm surges can undercut the base and lead to eventual collapse of the bluff. Bluffs are also shaped by wind, surface runoff, and ground water erosion (see Sections 2.8.3, 2.8.5, and 2.8.6).

Coastal bluffs are a prominent landform in Newport Beach. There are ocean facing coastal bluffs along the shoreline of Corona del Mar, Shorecliffs, and Cameo Shores. There are also coastal bluffs facing the wetlands of Upper Newport Bay, Semeniuk Slough, and the degraded wetlands of the Banning Ranch property. Finally, there are coastal bluffs surrounding Lower Newport Bay. These can be seen along Coast Highway from the Semeniuk Slough to Dover Drive and in Corona del Mar above the Harbor Entrance. These bluffs faced the open ocean before the Balboa Peninsula formed and are now generally separated from the shoreline. Coastal bluffs are considered significant scenic and environmental resources and are to be protected.

Most of the coastal bluff top lands have been subdivided and developed over the years. However, many have been preserved as parkland and other open space. Also, most of the faces of the coastal bluff surrounding the Upper Newport Bay have been protected by dedication to the Upper Newport Bay Nature Preserve or dedicated as open space as part of **the Castaways, Eastbluff, Park Newport, Newporter North (Harbor Cove), and Bayview Landing** planned residential developments. In other areas, including Newport Heights, Cliff Haven, Irvine Terrace, **Dover Shores**, Corona del Mar, Shorecliffs, and Cameo Shores, the coastal bluffs fall within conventional residential subdivisions. Development on these lots occurs mainly on a lot-by-lot basis. As a result, some coastal bluffs remain pristine and others are physically or visually obliterated by structures, landform alteration or landscaping.

~~Policies regarding coastal bluffs need to make a distinction between areas where the coastal bluff is essentially unaltered and those in developed areas where the coastal bluff has been altered.~~ **Development restrictions, including setbacks, must be established to ensure geologic stability while addressing current patterns of development. Where the bluff is subject to marine erosion, development on bluff top lots must be set back at least 25 feet from the bluff edge. On bluff top lots where the bluff is not subject to marine erosion, the setback from the bluff edge should be based on the**

predominant line of existing development along the bluff edge in each neighborhood. These bluff edge setbacks may be increased to maintain sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years).

~~In areas with unaltered coastal bluffs, development on the bluff face should be~~
is generally prohibited, with exceptions for certain public improvements **or private improvements determined to be consistent with the predominant line of development.**, and development of bluff top should be controlled. ~~In areas where the coastal bluff has been altered, development on the bluff face and bluff top should be controlled to minimize further alteration.~~

Corona del Mar is one of the few areas in the coastal zone where there is extensive development of the bluff face; specifically, residential development on Avocado Avenue, Pacific Drive, Carnation Avenue, and Ocean Boulevard. The initial subdivision and development of these areas occurred prior to the adoption of policies and regulations intended to protect coastal bluffs and other landforms. Development in these areas is allowed to continue on the bluff face to be consistent with the existing development pattern and to protect coastal views from the bluff top. However, development on the bluff face is controlled to minimize further alteration.

The bluffs along Bayside Drive were at one time exposed to the Lower Newport Bay. However, these bluffs separated from the shoreline when abutting tidelands were filled and reclaimed in the 1920s and later developed into the communities of Promontory Bay, Beacon Bay, and Bayside. Later development of Irvine Terrace and Promontory Point cut and filled these bluffs, to an extent that they can be best identified as manufactured slopes rather than natural slopes. Given that the bluffs along Bayside Drive have faces that are not the result of erosion, faulting, or folding and are no longer subject to marine erosion, they did not meet the definition of coastal bluffs and are not subject to the policies of this section.
Development in these areas is subject to setbacks established for bluffs not subject to marine erosion.

Coastal Canyons

There are three significant canyons in the coastal zone, Big Canyon, Buck Gully, and Morning Canyon. The steep slopes and vegetation of these canyons are distinctive features on the shoreline of the ocean and bay. Big Canyon is protected as a nature park. However, Buck Gully and Morning Canyon are under private ownership and there is extensive residential development on the slopes of both canyons. Therefore, any effort to protect and enhance the visual quality of these canyons will require the cooperation of the property owners.

Other Landforms

Some of the edges of Newport Mesa and the San Joaquin Hills are located a considerable distance from the shoreline, but are still highly visible from public view points, roadways, or the water. These areas include the slopes and non-coastal bluffs of Newport Heights and Corona del Mar. These areas have moderate to steep slopes, accentuated in places by gullies, ravines, and rock outcroppings. In order to protect the overall visual quality of the coastal zone, new development in these areas need to be sited and designed to minimize the alteration of natural land forms and to be visually compatible with the character of surrounding areas.

120. 4.4.3-1. ~~In areas where the coastal bluff remains essentially unaltered,~~ **Require new development *planned communities* to dedicate or preserve as open space the *coastal* bluff face and an area inland from the edge of the *coastal* bluff adequate to provide safe public access and to avoid or minimize visual impacts.**

121. 4.4.3-2. ~~In areas where the coastal bluff remains essentially unaltered,~~ **Require all new development located on a bluff top to be set back from the bluff edge a sufficient distance to ensure *stability*, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years). *Such setbacks must take into consideration expected long-term bluff retreat over the next 75 years, as well as slope stability. To assure stability, the development must maintain a minimum factor of safety of 1.5 against landsliding for the economic life of the structure.***

122. 4.4.3-3. ~~In areas where the coastal bluff remains essentially unaltered,~~ **Prohibit development on bluff faces, except *private development on coastal bluff faces along Ocean Boulevard and Carnation Avenue in Corona del Mar determined to be consistent with the predominant line of existing development or* public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize alteration of the bluff face, to not contribute to further erosion of the bluff face, and to be visually compatible with the surrounding area to the maximum extent feasible.**

123. 4.4.3-4 ~~In areas where the coastal bluff has been altered, establish setback lines for principal and accessory structures based on the predominant line of existing development along the bluff in each block. Apply the setback line downward from the edge of the bluff and/or upward from the toe of the bluff to restrict new development from extending beyond the predominant line of existing development.~~

124. 4.4.3-5. ~~In areas where the coastal bluff has been altered, design and site development to minimize alteration of those portions of coastal bluffs with slopes in excess of 20 percent (5:1 slope). Prohibit development on those portions of coastal bluffs with unaltered natural slopes in excess of 40 percent (2.5:1 slope), unless the application of this policy would preclude any reasonable economic use of the property.~~
125. 4.4.3-6. ~~The c~~Coastal bluffs do not include bluffs along Bayside Drive that have been cut and filled by the Irvine Terrace and Promontory Point development and are no longer subject to marine erosion. **New development on these bluffs is subject to the setback restrictions established for blufftop development located on a bluff not subject to marine erosion.**
126. 4.4.3-8. Employ site design and construction techniques to minimize alteration of coastal bluffs **to the maximum extent feasible**, such as:
- A. Siting new development on the flattest area of the site, except when an alternative location is more protective of coastal resources.
 - B. Utilizing existing driveways and building pads to the maximum extent feasible.
 - C. Clustering building sites.
 - D. Shared use of driveways.
 - E. Designing buildings to conform to the natural contours of the site, and arranging driveways and patio areas to be compatible with the slopes and building design.
 - F. Utilizing special foundations, such as stepped, split level, or cantilever designs.
 - G. Detaching parts of the development, such as a garage from a dwelling unit.
 - H. Requiring any altered slopes to blend into the natural contours of the site.
127. New Policy (Section 4.4.3): **Require all new blufftop development located on a bluff subject to marine erosion to be set back at least 25 feet from the bluff edge. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and**

pools. The setback shall be increased where necessary to ensure safety and stability of the development.

128. New Policy (Section 4.4.3): **Require all new blufftop development located on a bluff not subject to marine erosion to be set back from the bluff edge in accordance with the predominant line of existing development in the subject area. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools. The setback shall be increased where necessary to ensure safety and stability of the development.**
129. New Policy (Section 4.4.3): **On bluffs subject to marine erosion, require new accessory structures such as decks, patios and walkways that do not require structural foundations to be sited at least 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, instability or other hazards.**
130. New Policy (Section 4.4.3): **On bluffs not subject to marine erosion, require new accessory structures such as decks, patios and walkways that do not require structural foundations, to be set back from the bluff edge in accordance with the predominant line of existing accessory development. Require accessory structures to be removed or relocated landward when threatened by erosion, instability or other hazards.**
131. New Policy (Section 4.4.3): **Where principal structures exist on coastal bluff faces along Ocean Boulevard and Carnation Avenue in Corona del Mar, require all new development to be sited in accordance with the predominant line of existing development in order to protect public coastal views. Establish a predominant line of development for both principle structures and accessory improvements. The setback shall be increased where necessary to ensure safety and stability of the development.**
132. New Policy (Section 4.4.3) **Maintain approved bluff edge setbacks for the coastal bluffs within the planned communities of Castaways, Eastbluff, Park Newport, Newporter North (Harbor Cove), and Bayview Landing to ensure the preservation of scenic resources and geologic stability.**
133. New Policy (Section 4.4.3): **Require swimming pools located on bluff properties to incorporate leak prevention and detection measures.**
134. **New Policy (Section 4.4.3) Establish canyon development setbacks based on the predominant line of existing development for Buck Gully**

and Morning Canyon. Do not permit development to extend beyond the predominant line of existing development by establishing a development stringline where a line is drawn between nearest adjacent corners of existing structures on either side of the subject property. Establish development stringlines for principle structures and accessory improvements.

135. Add note at end of Section 4.4.3: **Note: See Sections 2.8.6 and 2.8.7 for technical submittal requirements on beach, bluff and canyon properties.**
136. 4.4.4-5. ~~Continue to strictly limit~~ **Prohibit new** billboards and **roof top signs and regulate the bulk and height of** other off-site **freestanding** signs **that affect public coastal views. Heritage signs are not subject to this restriction.**
137. 4.5.1-2. Require a qualified paleontologist/archeologist to monitor all grading and/or excavation where there is a potential to affect cultural or paleontological resources. If grading operations or excavations uncover paleontological/archaeological resources, require the paleontologist/archeologist monitor to suspend all development activity to avoid destruction of resources until a determination can be made as to the significance of the paleontological/ archaeological resources. ~~If found to be significant require the site(s) to be preserved for a reasonable period of time to allow a recovery plan to be completed to assure the protection of the paleontological/archeological resources.~~ **If resources are determined to be significant, require submittal of a mitigation plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. Mitigation plans shall include a good faith effort to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, in situ preservation/capping, and placing cultural resource areas in open space.**
138. 4.5.1-4. **Where in situ preservation and avoidance are not feasible,** ~~R~~require new development to donate scientifically valuable paleontological or archaeological materials to a responsible public or private institution with a suitable repository, located within Orange County, whenever possible.
139. New Policy (Section 4.5.1): **Where there is a potential to affect cultural or paleontological resources, require the submittal of an archeological/cultural resources monitoring plan that identifies monitoring methods and describes the procedures for selecting archeological and Native American monitors and procedures that will be followed if additional or unexpected archeological/cultural resources are encountered during development of the site. Procedures may**

include, but are not limited to, provisions for cessation of all grading and construction activities in the area of the discovery that has any potential to uncover or otherwise disturb cultural deposits in the area of the discovery and all construction that may foreclose mitigation options to allow for significance testing, additional investigation and mitigation.

140. Insert new section 4.6 (Environmental Review)

4.6 Environmental Review

The protection of coastal resources and protection from coastal hazards requires that applications for new development undergo appropriate environmental review. In most cases, the City conducts this review through implementation of the California Environmental Quality Act.

The California Environmental Quality Act (CEQA) requires the state to review the environmental impacts of projects that require state or local government approval. CEQA requires appropriate mitigation of projects that contain significant environmental impacts. Specifically, CEQA states that agencies must identify potential environmental impacts, alter projects to avoid such impacts where feasible, seek alternatives that will minimize unavoidable impacts, and require mitigation for any unavoidable impacts that are necessary. CEQA mandates that the responsible agencies consider a reasonable range of project alternatives that offer substantial environmental advantages over the project proposal. CEQA adds that the agency responsible for the project's approval must deny approval if there would be "significant adverse effects" when feasible alternatives or feasible mitigation measures could substantially lessen such effects.

To ensure consistency with the resource protection policies of the Coastal Land Use Plan, applications for new development subject to coastal development permit requirements will be reviewed by qualified City staff, contracted employee/consultant and/or advisory committee in accordance with the CEQA requirements, as well as those contained in the Local Coastal Program.

Policies:

4.6-1. Review all new development subject to California Environmental Quality Act (CEQA) and coastal development permit requirements in accordance with the principles, objectives, and criteria contained in CEQA, the State CEQA Guidelines, the Local Coastal Program, and any environmental review guidelines adopted by the City.

4.6-2. Integrate CEQA procedures into the review procedures for new development within the coastal zone.

- 4.6-3. Require a qualified City staff member, advisory committee designated by the City, or consultant approved by and under the supervision of the City, to review all environmental review documents submitted as part of an application for new development and provide recommendations to the appropriate decision-making official or body.
- 4.6-4. Require the City staff member(s) and/or contracted employee(s) responsible for reviewing site specific surveys and analyses to have technical expertise in biological resources, as appropriate for the resource issues of concern (e.g. marine/coastal, wetland/riparian protection and restoration, upland habitats and connectivity) and be knowledgeable about the City of Newport Beach.
- 4.6-5. Where development is proposed within or adjacent to ESHA, wetlands or other sensitive resources, require the City staff member(s) and/or contracted employee(s) to consider the individual and cumulative impacts of the development, define the least environmentally damaging alternative, and recommend modifications or mitigation measures to avoid or minimize impacts. The City may impose a fee on applicants to recover the cost of review of a proposed project when required by this policy.
- 4.6-6. Where development is proposed within or adjacent to ESHA, wetlands or other sensitive resources, require the City staff member(s) and/or contracted employee(s) to include the following in any recommendations of approval: an identification of the preferred project alternative, required modifications, or mitigation measures necessary to ensure conformance with the Coastal Land Use Plan. The decision making body (Planning Director, Planning Commission, or City Council) shall make findings relative to the project's conformance to the recommendations of the City staff member(s) and/or contracted employee(s).
- 4.6-7. Require City staff member(s) and/or contracted employee(s) to make a recommendation to the decision making body as to whether an area constitutes an ESHA, and if recommended as an ESHA, then establish the boundaries thereof and appropriate buffers.
- 4.6-8. Coordinate with the California Department of Fish and Game, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and other resource management agencies, as applicable, in the review of development applications in order to ensure that impacts to ESHA and marine resources, including rare, threatened, or endangered

species, are avoided or minimized such that ESHA is not significantly degraded, habitat values are not significantly disrupted, and the biological productivity and quality of coastal waters is preserved.

- 4.6-9. Require applications for new development, where applicable, to include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains statements that the project site is suitable for the proposed development and that the development will be safe from geologic hazard for its economic life. For development on coastal bluffs, including bluffs facing Upper Newport Bay, such reports shall include slope stability analyses and estimates of the long-term average bluff retreat rate over the expected life of the development. Reports are to be signed by an appropriately licensed professional and subject to review and approval by qualified city staff member(s) and/or contracted employee(s).

CHAPTER 5 (GLOSSARY)

141. New Definition: Appealable Development: After certification of the Newport Beach Local Coastal Program, an action taken by the City of Newport Beach on a coastal development permit application may be appealed to the Coastal Commission for only the following types of developments:

(1) Developments approved by the City between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

(2) Developments approved by the City not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, within 300 feet of the top of the seaward face of any coastal bluff.

(3) Developments approved by the City not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.

(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500 of the Coastal Act).

(5) Any development which constitutes a major public works project or a major energy facility.

142. Bluff: A scarp or steep face of rock, decomposed rock, sediment or soil resulting from erosion, faulting, or folding of the land mass with 10 feet or more in vertical extent. **A high bank or bold headland with a broad, precipitous, sometimes rounded cliff face overlooking a plain or body of water. A bluff may consist of a steep cliff face below and a more sloping upper bluff above.**
143. Bluff, Coastal: A bluff overlooking a beach or shoreline or that is subject to marine erosion. **Many coastal bluffs consist of a gently sloping upper bluff and a steeper lower bluff or sea cliff. The term "coastal bluff" refers to the entire slope between a marine terrace or upland area and the sea. The term "sea cliff" refers to the lower, near vertical portion of a coastal bluff.** For purposes of establishing jurisdictional and permit boundaries **coastal bluffs include**, (1) those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion; and (2) those bluffs, the toe of which is not now or was not historically subject to marine erosion, but the toe of which lies within an area otherwise identified as an Appealable Area.
144. Bluff Edge: The upper termination of a bluff, cliff, or seacliff: In cases where the top edge of the cliff **bluff** is rounded away from the face of the cliff **bluff** as a result of erosional processes related to the presence of the steep cliff **bluff face**, the bluff line or edge shall be defined as that point nearest the cliff **bluff** beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff **bluff**. In a case where there is a steplike feature at the top of the cliff **bluff** face, the landward edge of the topmost riser shall be taken to be the cliff **bluff** edge. **Bluff edges typically retreat landward due to coastal erosion, landslides, development of gullies, or by grading (cut). In areas where the bluff top or bluff face has been cut or notched by grading, the bluff edge shall be the landwardmost position of either the current or historic bluff edge. In areas where fill has been placed near or over the historic bluff edge, the original natural bluff edge, even if buried beneath fill, shall be taken to be the bluff edge.**
145. BMPs: Best Management Practices. **Schedules of activities, prohibitions of practices, operation and maintenance procedures, and other management practices to prevent or reduce the conveyance of pollution in stormwater and urban runoff, as well as, treatment requirements and structural treatment devices designed to do the same.**
146. New Definition: **Buffer: A buffer is a development setback that provides essential open space between development and protected**

habitat. Buffers keep disturbance at a distance, accommodate errors in the estimation of habitat boundaries, and provide important auxiliary habitat that may be used, for example, for foraging, maintenance of pollinators, or refuge from high tides. Buffers should be measured from the delineated boundary of an ESHA or wetland or, for streams, from the top of bank or the landward edge of riparian vegetation, which ever provides the larger buffer.

147. New Definition: **Canyon Edge: The upper termination of a canyon: In cases where the top edge of the canyon is rounded away from the face of the canyon as a result of erosional processes related to the presence of the canyon face, the canyon edge shall be defined as that point nearest the canyon beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the canyon. In a case where there is a steplike feature at the top of the canyon face, the landward edge of the topmost riser shall be taken to be the canyon edge.**
148. New Definition: **Cliff: A high, very steep to perpendicular or overhanging face of rock.**
149. New Definition: **Demolition: The deliberate removal or destruction of the frame or foundation of any portion of a building or structure for the purpose of preparing the site for new construction or other use.**
150. Ephemeral: Short lived (i.e., **e.g.,** an ephemeral stream **only flows immediately after rainfall**).
151. ESA: Environmental study area. **Relatively large, undeveloped areas containing natural habitats and may be capable of supporting sensitive biological resources.**
152. ESHA Buffer: ~~Open space that horizontally separates and protects environmentally sensitive habitat areas from development areas. Buffer areas should be contiguous with the sensitive habitat but are not in themselves a part of the environmentally sensitive habitat area to be protected.~~
153. Exclusion Area: That portion of the coastal zone within an exclusion area boundary adopted pursuant to the Coastal Act and approved by the Coastal Commission **after the effective date of the delegation of development review authority** and depicted on the **certified** Permit and Appeal Jurisdiction Map. **Development within this area is excluded from coastal development permit requirements if certain criteria identified in the adopted exclusion are met.**

154. New Definition: **First Public Road Paralleling the Sea -- shall mean that road nearest the sea, as defined in this Section, and which meets all of the following criteria:**
- 1. The road is lawfully open and suitable for uninterrupted use by the public;**
 - 2. The road is maintained by a public agency;**
 - 3. The road contains an improved all-weather surface open to motor vehicle traffic in at least one direction;**
 - 4. The road is not subject to any restrictions on use by the public except during an emergency or for military purposes; and**
 - 5. The road connects with other public roads providing a continuous access system and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.**
155. Groin: ~~A structure that extends from a beach or bulkhead perpendicularly to the shoreline into tidal waters, intended to trap and retain and/or reduce the erosion of sand and retard the general erosion of the shoreline and undermining of shore protection structures (bulkheads, riprap slopes, etc.).~~ **A shoreline protection structure built, usually perpendicular to the shoreline, to trap nearshore sediment or retard erosion of the shore. A series of groins acting together to protect a section of beach is known as a groin system or groin field.**
156. Habitat: The locality, **including the physical and biological environment,** in which a plant or animal lives.
157. Local Coastal Program: A local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of, this division **the Coastal Act** at the local level.
158. Monitoring: Systematic collection of physical, biological, or economic data or a combination of these data ~~on a beach nourishment project~~ in order to make decisions regarding project operation or to evaluate project performance. **Monitoring is typically required for beach nourishment projects and habitat restoration projects.**

159. New Definition: **Non-conforming structure: A structure that was lawfully erected, but which does not conform with the property development regulations prescribed in the regulations for the district in which the structure is located by reason of adoption or amendment of this code or by reason of annexation of territory to the City.**
160. New Definition: **Non-conforming use: A use of a structure or land that was lawfully established and maintained, but which does not conform with the use regulations or required conditions for the district in which it is located by reason of adoption or amendment of this code or by reason of annexation of territory to the City.**
161. New Definition: **Predominant Line of Development: The most common or representative distance from a specified group of structures to a specified point or line (e.g. topographic line or geographic feature). For example, the predominant line of development for a block of homes on a coastal bluff (a specified group of structures) could be determined by calculating the median distance (a representative distance) these structures are from the bluff edge (a specified line).**
162. New Definition: **Sea cliff: A vertical or very steep cliff or slope produced by wave erosion, situated at the seaward edge of the coast or the landward side of the wave-cut platform, and marking the inner limit of beach erosion.**
163. Scarp (Beach Scarp): An almost vertical slope along the beach caused by wave erosion. It may vary in height from a few **inches to several feet** ~~centimeters to a meter~~ or more, depending on wave action and the nature and composition of the beach.
164. New Definition: **Stream: A topographic feature that at least periodically conveys water through a bed or channel having banks. This includes watercourses having a surface or subsurface flow that supports or has supported riparian vegetation.**
165. Tidal Epoch (National Tidal Datum Epoch): The specific 19-year period adopted by the National Ocean Service as the official time segment over which tide observations are taken and averaged to form tidal datums, **such as Mean Lower Low Water. The 19-year period includes an 18.6 year astronomical cycle that accounts for all significant variations in the moon and sun that cause slowly varying changes in the range of tides. A calendar day is 24 hours and a "tidal day" is approximately 24.84 hours. Due to the variation between calendar day and tidal day, it takes 19 years for these two time cycles to establish a repeatable pattern. Thus, if the moon is full today, then the moon will be full again on this**

day of the year 19 years from today. The present tidal epoch used is 4960 through 1978- **1983 - 2001.**

166. New Definition: **TMDL (Total Maximum Daily Load): The maximum amount of a pollutant that can be discharged into a water body from all sources (point and non-point) and still maintain water quality standards. Under Clean Water Act section 303(d), TMDLs must be developed for all water bodies that do not meet water quality standards after application of technology-based controls. TMDL also refers to the written, quantitative analysis and plan for attaining and maintaining water quality standards in all seasons for a specific waterbody and pollutant.**

When incorporating the suggested modifications into the Coastal Land Use Plan, inconsistencies may arise between the text of the narrative and the revised policies. Descriptive narrative no longer consistent with the policies will need to be revised by the City to conform the narrative to any associated policy that has been revised through suggested modifications as part of the submission of the final document for certification pursuant to Sections 13544 and 13544.5 of the California Code of Regulations. Narrative is intended only as background and shall not be considered policy. Language clearly labeled under “**Policy(ies)**” within each section shall control.

The addition of new policies or the deletion of policies (as submitted) will affect the numbering of subsequent LUP policies when the City of Newport Beach publishes the final LUP incorporating the Commission’s suggested modifications. This staff report will **not** make revisions to the policy numbers. The City will make modifications to the numbering system when it prepares the final LUP for submission to the Commission for certification pursuant to Sections 13544 and 13544.5 of the California Code of Regulations.

The City will also make non-substantive changes to the maps where necessary to provide updated information and greater clarification. These changes may include the insertion of map titles/numbers, identification of new parks and recreational facilities, and use of a new detailed shoreline layer.

VI. FINDINGS FOR DENIAL OF CERTIFICATION OF THE CITY OF NEWPORT BEACH LAND USE PLAN AMENDMENT, AS SUBMITTED, AND FINDINGS FOR APPROVAL OF THE CITY OF NEWPORT BEACH LAND USE PLAN AMENDMENT, IF MODIFIED AS SUGGESTED

A. Amendment Description

The proposed submittal consists of a comprehensive update of the City's currently certified Land Use Plan (LUP). All sections of the LUP have been substantially modified, including those related to coastal resources, public access and land use. The updated document is more detailed in each issue area, providing additional background in the narratives and a greater number of policies. The updated LUP is also more reflective of current conditions, as well as of coastal resource concerns, such as water quality, shoreline erosion and habitat protection.

B. Findings for Denial

1. Coastal Resources

Chapter 4 (Coastal Resource Protection) of the City's proposed LUP addresses issues related to the protection of biological, scenic and paleontological resources. Policy areas of particular concern are those involving environmentally sensitive habitat area (ESHA), coastal bluffs and marine resources. Inconsistency with the applicable Coastal Act policies is discussed below.

ESHA

The Chapter 3 policies most applicable to this planning issue are:

Section 30240.

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The Coastal Act requires environmentally sensitive habitat areas (ESHA) to be protected against significant disruption of habitat values and restricts development within ESHA to resource dependent uses. Development in areas adjacent to ESHA

must be sited and designed to prevent impacts that would significantly degrade those areas and must be compatible with the continuance of those habitat and recreation areas.

Section 30107.5 defines ESHA as *“any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.”*

As development pressures increase, it is critical to protect remaining ESHA through strong LUP policies. Clear identification of sensitive habitats is necessary to ensure their continuance. The Commission has previously encouraged the upfront identification of ESHA as part of the LUP submittal. Wherever possible, it is preferred that local governments specifically identify areas within the City that are considered ESHA, including the boundaries of such areas. Providing these details at the time of LUP submittal can facilitate crafting protections, such as buffers and appropriate land use designations. Including these standards in the LUP will provide greater predictability for prospective applicants.

Provisions for subsequent site-specific ESHA identification must also be included at the time of LUP submittal. Site-specific analysis is necessary to recognize changes over time. For instance, boundaries of habitat areas can expand and contract. Plant and wildlife species that were not previously identified in an area can be discovered within or migrate to areas where they weren't previously known to be. Over time, plant and animal species and/or their habitats can become more rare, can be found to have a special role not previously known, or be found to be more easily disturbed than previously known and thus would need to be designated ESHA. Adequate checks and balances and scientific objectivity need to be included in procedures for identification of ESHA.

As submitted, the City's LUP fails to specifically identify ESHA within the City. Instead, the City proposes a method for ESHA identification that occurs at the time development is proposed.

There is descriptive narrative which precludes the ESHA policies in the proposed LUP. The narrative is important in this LUP because it provides context for the policies that follow it and would guide interpretation of those policies. Thus, omissions and nuances in the narrative could lead to missed ESHA designations and impacts to ESHA that would be inconsistent with the Coastal Act. For instance, the LUP narrative provides a list of attributes that need to be taken into consideration when determining whether a habitat area is an environmentally sensitive habitat area (ESHA). Policy 4.1.1-1 provides the definition of ESHA and outlines the attributes to be evaluated in making an ESHA determination, mirroring the narrative. The list of attributes is not comprehensive or sufficiently detailed. The list omits factors that the Commission would typically use to identify ESHA. In other instances, the factor listed misses a detail that is crucial in applying that element as a determining factor in the ESHA designation. For instance,

the LUP states that the presence of a natural community on the CDFG CNDDDB list is an attribute that can qualify an area as ESHA. The CNDDDB is a broad list of habitats that are present in California, only some of which are rare. The identification of a natural community on the CNDDDB list alone is not enough. Rather, a notation on that list that the community is 'rare' is more telling that the community could qualify as ESHA. Conversely, and as stated in CDFG materials regarding the CNDDDB, that list is not an exhaustive and comprehensive inventory of all rare species and natural communities statewide. Thus, other evidence of rarity needs to be considered.

In addition, the presence or potential presence of species that are not listed under State or federal law, but for which there is compelling evidence of rarity, must be included. Otherwise a species that is considered rare by the California Native Plant Society¹ (CNPS) or another entity would not be properly protected under the policies of the LUP as submitted. In addition, a species that is widespread regionally, but locally rare, may not be designated on a state or federal list and would not be properly protected. When determining whether a habitat area is ESHA, the ecosystem functions of a species or habitat must also be considered. As provided for in Section 30107.5 of the Coastal Act, ESHA includes species or habitats that are rare or especially valuable because of their special nature or role in an ecosystem and could be easily disturbed.

The narrative discusses "habitat integrity/connectivity." Integrity attributes are listed. Although the list is a useful starting point, it lacks detail and supporting examples which are important to assure the attribute isn't misapplied. One attribute of habitat integrity listed is presence of invasive/non-native vegetation. The mere presence of invasive or non-native vegetation should not be a primary consideration. Habitats can exist and thrive in the presence of non-native plants. Only where exotic species are so overwhelmingly dominant that the native community can no longer perform its functions in the ecosystem should the presence of exotic species rebut the presumption of ESHA.

Policy 4.1.1-2 requires a survey and analysis be submitted when development would occur within or adjacent to areas identified as potential ESHA. Not enough has been done to clearly identify potential ESHA sites within the City. These omissions in ESHA designation could result in projects being proposed in, or adjacent to, areas that are ESHA, but have not been identified as such at the time development is proposed. A failure to identify ESHA could lead to possible adverse impacts to ESHA, inconsistent with Section 30240 of the Coastal Act.

Procedurally, the LUP allows a qualified biologist to make the determination that a habitat area does or does not meet the definition of ESHA. If a determination is made that an area is not ESHA, the LUP states that the habitat area does not warrant the special land use and development restrictions of Section 30240 of the Coastal Act. Once the LUP is certified, the standard of review for such determinations will be the Land Use Plan, not the Coastal Act. Although the information gathered by a qualified

¹ CNPS is a non-profit organization dedicated to the preservation of California native flora. CNPS and the CA Dept. of Fish and Game have a cooperative agreement through an MOU in which CNPS provides native plant training to CFG staff.

biologist should be utilized to designate ESHA; it is not the biologist that should make such a determination. The biologist should make a recommendation, but not that actual determination. As will be discussed in more detail below, it is the decision-making body that should evaluate the quantitative data gathered as well as any analyses provided when determining whether a site contains ESHA.

The LUP does not list specific habitat types that should be considered ESHA. Nor does the LUP identify the location or geographic boundaries of ESHA. Instead the LUP uses the designation of Environmental Study Areas (ESAs) to distinguish potentially sensitive areas. The boundaries of the ESAs are broad and include areas that would not constitute ESHA. As currently drawn, the ESA boundaries are too rough and overly inclusive to be used to depict the boundaries of ESHA. In addition, the ESAs do not accurately incorporate other areas within the City known as a result of prior Commission actions to contain ESHA (e.g. Bayview Landing). More upfront specificity is required to inform both the applicant/property owner and the decision-making body of the potential existence of ESHA before the site-specific analysis gets underway. Specific habitat types that could qualify as ESHA must be identified, and the potential location of these habitats must at least be preliminarily delineated. That way the owner is fully aware of the potential for sensitive resources when considering development. Also, the reviewing party at the local government will be better able to identify when a site requires more detailed analyses by a qualified professional.

The LUP does not specify how projects involving biological resources, including potential ESHA, will be reviewed. The policies do not outline who will be reviewing such projects, what their qualifications are, and how a project recommendation will be developed. Policy 4.1.1-2 simply states that a site-specific survey and analysis prepared by a qualified biologist must be submitted as a filing requirement. No further detail is provided. Without such detail, the LUP could be interpreted as deferring the decision as to whether there is ESHA present to the applicant's biologist, rather than to the decision making body. In order to properly determine the resource impacts of a project, how those impacts are treated by the resource protection policies, alternatives and/or mitigation measures that could limit the impacts, etc., the site-specific surveys and analyses must be reviewed by a qualified City staff member and/or contracted employee with technical expertise in biological resources. A recommendation can then be made by the staff/contract employee after consideration of the site specific data, potential impacts, alternatives, project modifications and mitigation measures if necessary.

The takings language of Policy 4.1.1-5 is inconsistent in this context because it addresses a property rights issue rather than an environmental protection issue. The issue of takings is not limited to development involving ESHA. The potential for otherwise-appropriate regulation to affect a takings must be considered in other circumstances as well, including in the context of projects that involve development in hazardous areas and those that impact public access. A takings caveat can be added in a separate, more universal, section of the document.

Policies regarding development adjacent to ESHA are lacking. No specific controls have been established to minimize impacts to ESHA resulting from adjacent development, and buffer requirements have not been provided. Buffer areas must be established to provide a transition between development and sensitive resources to ensure the protection of the latter. Policy 4.1.1-8 requires “*buffers of sufficient size to ensure the protection of ESHAs.*” Although this is favorable, more specificity is necessary to assure that buffers of sufficiently protective sizes are established. For example, there are certain types of ESHA known to be present in the City (e.g. coastal sage scrub and coastal bluff scrub) that require at least 20 to 50 foot buffers to minimize disturbance to the habitat. Therefore, the LUP must provide standards for buffers to protect sensitive resources.

Such standards must include an identification of allowable uses within buffers. As submitted, the LUP fails to identify the types of uses that ought to be present within buffers, those that may be present, and those that should not be present. It must be made clear what can occur within these transitional buffer areas to prevent degradation of sensitive habitat areas and to ensure continuance of those habitat areas.

Policy 4.1.1-6 identifies uses as “resource dependent” that are not sufficiently defined. If interpreted broadly, certain uses would be allowed in ESHA that clearly would not be resource dependent. For example, the policy allows “educational, interpretive and research facilities.” This is a very broad description of allowable uses. Such a facility could constitute a new structure, whereas appropriate resource dependent uses within ESHA are typically considered less substantial developments, such as trails and interpretive signs.

Policy 4.1.3-1 offers general development controls and mitigation requirements for impacts to Environmental Study Area (ESA) natural habitats. Various portions of the policy must be revised to more strictly prohibit and eliminate adverse impacts resulting from development and pedestrian access. For example, it must be made clear that removal of all unauthorized structures that impact wetlands or other sensitive resources should be pursued to restore the resource.

Policy 4.1.3-1 fails to include specific mitigation standards. Mitigation is only discussed in a general manner as it applies to impacts to ESAs. The policy states that mitigation is required for impacts to wetlands, but says nothing directly about terrestrial ESHA. Where impacts to ESHA and other sensitive resources are allowed, mitigation standards must be established to ensure the resource dependent use does not significantly disrupt habitat values. Mitigation must be required even for resource dependent uses. For instance, public trails are typically considered resource dependent uses, but often require vegetation removal. This vegetation removal must be offset with mitigation.

Without policies specifically addressing how ESHA will be defined, evaluated and protected, the LUP cannot be found to meet the requirements of and to be in conformity with Section 30240 of the Coastal Act and therefore must be denied.

Natural Landforms/Coastal Bluffs

The Chapter 3 policies most applicable to this planning issue are:

Section 30253.

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*
- (3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.*
- (4) Minimize energy consumption and vehicle miles traveled.*
- (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.*

Section 30251.

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The LUP proposes a number of policies related to eliminating/reducing the risks associated with hazards within the City's Coastal Zone. The bulk of these are found in Section 2.8 (Hazards and Protective Devices). This section deals with hazards such as storm surges, beach and bluff erosion, landslides and slope failure and wildland fires. The City has also incorporated many policies that pertain to development of coastal bluffs in Section 4.4 (Scenic and Visual Resources). The City has established a policy approach for coastal bluffs that is inconsistent with the hazard avoidance and scenic resource protection policies of the Coastal Act.

To address the varying condition of bluffs throughout Newport Beach, the LUP characterizes bluffs as either “altered” or “unaltered” and applies different development standards to each. Where bluffs have not been previously developed and remain in an “essentially unaltered” condition, Policy 4.4.3-2 requires development to be set back from the bluff edge a “sufficient distance” and Policy 4.4.3-3 prohibits bluff face development. Where bluffs have been altered, Policy 4.4.3-4 requires the establishment of setback lines for principal and accessory structures based on the predominant line of existing development along the bluff and Policy 4.4.3-5 requires development to minimize alteration of those portions of coastal bluffs with slopes in excess of 20 percent.

The descriptive narrative preceding the proposed LUP policies states that a distinction must be made between bluffs that have been altered by past grading and those that have not been significantly graded. The narrative goes on to explain that bluffs in certain areas have been cut and filled so extensively that such areas resemble manufactured slopes rather than natural slopes. Despite such grading, these areas are still recognizable as bluffs, a natural landform. In contrast, an artificial landform is a topographic feature that did not exist prior to grading or construction activities, such as a quarry pit excavation, a landfill, a freeway ramp, or a causeway. The Commission generally has recognized that natural landforms may be altered by grading—both cut and fill—but that they do not cease to be “natural landforms” because of such alteration. Thus, such areas must be subject to LUP provisions regarding natural landforms equal to Sections 30251 and 30253 of the Coastal Act.

The City’s approach would result in continued development of bluffs (and possibly greater degradation) where any type of past alteration has occurred. Additionally, the policies would be subject to potentially inconsistent interpretation--particularly if the history of the site is unknown. Moreover, despite the asserted basis for the distinction, the City’s policy does not distinguish between slopes that were altered so much that they resemble manufactured slopes and those that were altered less. It only distinguishes between bluffs that have been altered and those that have not, so that a bluff with fairly minor alterations gets treated as though it was so altered that it resembles a manufactured slope. Finally, even if the distinction the City is proposing was empirically valid, it should not be used to reduce the protections afforded to these areas as the City proposes. For example, the setback requirements are based primarily on issues of geologic safety and protection of visual resources, and whether or not a bluff has been altered, development should still be set back far enough to ensure stability (4.4.3-2), and development on the actual bluff face would likely create visual blight in either case (4.3.3-3).

Another deficiency of the proposed LUP policies stemming from the creation of a distinction between development along altered bluffs and development along unaltered bluffs relates to protective devices. Among other requirements, Section 30253 of the Coastal Act requires all new development along bluffs and cliffs to be sited and designed to avoid reliance upon protective devices which would alter natural landforms. However, the proposed LUP policies would require only development along unaltered

bluffs to be sited with a sufficient setback to avoid erosion hazards and remain stable without protective devices. The proposed LUP policies establish no setback requirement to address hazards avoidance if the bluff area is deemed to be “altered.” If, for example, the pattern of development were such that structures were constructed on the bluff face or too near the bluff edge in an area known to be geologically unstable, and the area was deemed to be an “altered” coastal bluff, all new development could be constructed with slope stabilization/bluff protective devices. The Coastal Act prohibits the construction of protective devices to accommodate new development. Allowing such development would not “*assure stability and structural integrity*” of new development, as required by Section 30253, nor would it be consistent with the requirement to avoid the construction of protective devices along bluffs and cliffs. Furthermore, in the event of a landslide, the stabilization system would become exposed. This would create adverse visual impacts, inconsistent with Section 30251.

Policy 4.4.3-6 specifies that coastal bluffs do not include bluffs along Bayside Drive that have been cut and filled by the Irvine Terrace and Promontory Point development and are no longer subject to marine erosion. This is inconsistent with the definition of coastal bluff in the California Code of Regulations, as well as in the submitted LUP glossary. In both definitions, a coastal bluff is identified as such if the toe is now or was historically (generally within the last 200 years) subject to marine erosion. According to the City’s submittal, the Bayside Drive bluff was historically subject to marine erosion within the last 200 years; thus, it meets the definition of a coastal bluff.

A number of the City’s bluff policies require strengthening or clarification to assure conformance with Sections 30251 and 30253 of the Coastal Act and the manner in which the Commission has applied those policies in Newport Beach. For example, requiring development to be set back a “sufficient distance” does not provide enough guidance for applicants or the decision-making body. Specific setback policies must be instituted as a means of limiting the encroachment of development seaward toward the bluff edge, ensuring geologic stability, and preventing the need for construction of protective devices and other engineered structures to protect development on bluffs. The establishment of minimal setbacks is necessary in order to account for uncertainty in geologic analyses, possible increases in long-term bluff retreat rates (as a result of sea level rise, for example), and to allow access for remedial action if and when erosion does threaten structures. Setbacks must be applied to principal development as well as accessory improvements. New development must also be required to meet a minimum factor of safety to assure stability.

The LUP lacks detail in regard to technical submittal requirements and project evaluation for development on coastal bluff lots. Although Section 2.8 offers greater detail for technical submittal requirements, no cross-reference has been provided. Policy 4.4.3-7 specifies that applications must include slope stability analyses and erosion rate estimates provided by an appropriately licensed professional. Submittals should also identify mitigation measures and contain an assurance that the proposed development will be safe from geologic hazard for its economic life. The policy makes no mention of how new submittals will be reviewed by the City. Not all staff members

have expertise in geotechnical matters and key points could be inadvertently missed. A qualified staff member or contract employee must be responsible for review of technical submittals.

As submitted, the LUP contains policies that are inconsistent with Sections 30253 and 30251 of the Coastal Act, and therefore must be denied.

Marine Resources

The Chapter 3 policies most applicable to these planning issues are:

Section 30230.

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231.

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232.

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Section 30233.

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

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(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 3041I, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

For the purposes of this section, "commercial fishing facilities in Bodega Bay" means that not less than 80 percent of all boating facilities proposed to be developed or improved, where such improvement would create additional berths in Bodega Bay, shall be designed and used for commercial fishing activities.

(d) Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

Wetlands

A number of wetland habitats are known to exist in Newport Beach, including coastal brackish marsh, coastal freshwater marsh, southern coastal salt marsh, southern hardpan vernal pools, freshwater seeps, and alkali meadows. The Coastal Act limits fill of wetlands to eight enumerated uses. The LUP includes wetland policies that allow for flexibility in interpretation that could lead to inconsistencies with Coastal Act requirements. Policy 4.2.2-1 provides a definition of wetland that includes a provision that is inconsistent with the State's definition of wetland. In it, the policy states that wetlands do not include vernal wet areas where the soils are not hydric. The Coastal Act defines wetlands as "...lands within the coastal zone which may be covered periodically or permanently with shallow water...." Cal.Pub. Res. Code § 30121. The more specific definition adopted by the Commission and codified in Section 13577(b)(1) of Title 14 of the California Code of Regulations defines a wetland as, "...land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes...." In discussing boundary determinations, the same section of the Regulations specifies that wetlands have a "predominance" of hydrophytic cover or a "predominance" of hydric soils. Although the definition is based on inundation or shallow saturation long enough for anaerobic reducing conditions to develop within the root zone¹, in practice hydrology is the most difficult wetland indicator to demonstrate. In California, a predominance of hydrophytes or a predominance of hydric soils is taken as evidence that the land was "wet enough long enough" to develop wetland characteristics. The City's proposed policy allows for misinterpretation of the wetland definition, which could result in wetland areas not being

¹ As demonstrated by the definitions of hydric soils and hydrophytes: "A hydric soil is a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part." National technical committee for hydric soils, October 18, 1994; A hydrophyte is, "Any macrophyte that grows in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content...." Environmental Laboratory. 1987. Corps of Engineers Wetland Delineation Manual. U.S. Army Corps of Engineers, Washington, D.C.

identified as such. This could lead to the dredging and/or fill of wetlands for a use that is not consistent with Section 30233 of the Coastal Act. As submitted, the LUP's Policy 4.2.2-1 is inconsistent with the Coastal Act as it would not provide adequate protection of wetland resources.

Policy 4.2.2-2 and corresponding narrative on page 4-43 addresses ambiguities in wetland characteristics. The narrative explains that sole reliance on one of the three wetland characteristics (e.g. hydrology, hydric soils or hydrophytic vegetation) can sometimes be "misleading." In situations where ambiguities in wetland characteristics exist, the LUP states, *"the judgment of a qualified biologist may be required to determine whether an area meets the definition of a wetland."* The policy allows for various parameters to be considered along with other factors to determine whether an area meets the definition of a wetland and to delineate wetland boundaries. As written, the policy regarding ambiguity suggests that it would take more than one wetland parameter to delineate a wetland when that wetland is deemed to be "ambiguous." The wetland identification method presented in the LUP is inconsistent with the California Code of Regulations, which state that only one wetland parameter is necessary to find an area to be a wetland. What would be necessary for a wetland or wetland characteristics to be considered "ambiguous" is itself ambiguous. If wetlands or wetland characteristics are frequently determined to be ambiguous, the LUP policy could result in widespread use of a multi-factor test, resulting in areas possessing only one wetland parameter not being identified as wetlands. As such, they would not be afforded the protections of Section 30233 of the Coastal Act. The ambiguity provision of the LUP could lead to the fill of wetlands for an unallowable use, inconsistent with the Coastal Act.

In addition, the LUP would allow a "qualified biologist" to make a wetland determination. Only the decision-making body can make such a determination after consideration of technical data provided by the "qualified biologist." As submitted, the policy allows for arbitrary application of the definition that would put wetland resources in jeopardy. Therefore, the LUP contains a wetland definition and delineation procedure that does not carry out the intent of Coastal Act Sections 30231 and 30233.

Policy 4.2.2-4 requires the provision of buffer areas around wetlands, but does not provide a numeric standard. Buffers, by separating development from wetlands, minimize the adverse effects of development on wetlands, thereby avoiding significant adverse effects to resources. Buffers also provide transitional habitat and upland area necessary for survival of various animal species. The Commission has typically found that a minimum 100-foot wetland buffer, or larger, is necessary to protect wetlands. The Commission recognizes that there are certain circumstances where smaller buffers may be appropriate, however the policy should establish a default minimum distance and then define the various circumstances in which the City would deviate from that default. Without the establishment of a minimum buffer size, projects could be approved with an inadequate buffer.

When fill or dredging of wetlands or open coastal waters is deemed to be 'allowable', Section 30233 of the Coastal Act requires that feasible mitigation measures be provided to minimize adverse environmental effects. The LUP includes a policy that establishes minimum mitigation measures if a project involves diking or filling a wetland (Policy 4.2.3-9). The policy lacks clarity in regards to the type of restoration or creation required and does not include numeric standards for mitigation. For example, mitigation ratios are not provided for allowable adverse impacts. A minimum standard should be established to ensure that there is no net loss of wetland acreage and to compensate for the potential that a wetlands creation or restoration project is not successful, as is often the case.

In addition, as currently written, mitigation efforts are not required to meet any performance criteria. Consequently, mitigation efforts may fail to achieve the intended result of creating functional wetland habitat. Without more specificity, the policy could also allow parties to mitigate wetland impacts outside the affected watershed.

As submitted, the LUP contains policies that would not adequately protect wetland resources and therefore must be denied.

Eelgrass

Section 4.2.5 discusses the presence of eelgrass in the Newport Harbor and compliance with the Southern California Eelgrass Mitigation Policy. The narrative explains the importance of protecting the ecological value of eelgrass meadows, while allowing periodic dredging of the harbor to enable commerce and recreation. A conceptual eelgrass mitigation program is presented for establishing a baseline of eelgrass and then allowing projects that impact eelgrass to occur so long as the baseline is maintained. This program has yet to be fully reviewed and will require approval from various resources agencies. It is not clear from the narrative that the program is conceptual in nature and therefore the discussion may mislead potential project proponents with projects involving eelgrass.

Policy 4.2.5-4 would allow successful eelgrass restoration sites to serve as mitigation sites for City projects and as a mitigation bank for private dredging impacts. Again, this type of a mitigation program would require substantial review by third parties before being implemented and should not be presented as a definitive policy in the LUP.

Policy 4.2.5-2 specifies that mitigation is not required where eelgrass migrates from a mitigation area into an area that did not previously contain eelgrass. This is inconsistent with standard National Marine Fisheries Service (NMFS) practice under the Southern California Eelgrass Mitigation Policy and past Commission practice. Eelgrass that migrates commands the same level of protection as that in the mitigation area. Moreover, the protection of such eelgrass is necessary to ensure, maintain, enhance, and where feasible, restore marine resources and the biological productivity of coastal waters in order for the LUP to be consistent with Section 30230 and 30231 of the Coastal Act.

Water Quality

Section 4.3 of the Coastal Resource Protection section addresses water quality. This section of City's LUP provides substantively sound policy direction, but lacks specific references to state and regional restrictions and goals. Newport Harbor (Lower Newport Bay) is included on the Federal Clean Water Act 303(d) list of "impaired" water bodies for metals, pesticides and priority organics. The designation as "impaired" means the quality of the water body cannot support the beneficial uses for which the water body has been designated – in this case secondary contact recreation and aquatic uses. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. Further, the RWQCB has targeted the Newport Bay watershed for increased scrutiny as a higher priority watershed under its Watershed Management Initiative. Consequently, projects that drain to Lower Newport Bay, must be designed to minimize or eliminate discharge of metals, pesticides and priority organics. At a minimum, all projects must satisfy any applicable load allocation promulgated as part of a Total Maximum Daily Load ("TMDL") adopted pursuant to Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d); and no new discharge should cause or contribute to the further violation of this water quality standard. See 42 C.F.R. § 122.44(d)(1)(i).

The policies of the LUP must be expanded to include references to the specific TMDL and load allocations for Newport Harbor and the Municipal Stormwater permit approved by the Regional Water Quality Control Board for storm sewer discharges to the harbor. As submitted, the policies of the LUP are not sufficiently detailed to protect water quality in Newport Beach's coastal zone and must be denied.

Dredging and Beach Nourishment

Section 4.2.3 of the LUP deals with Dredging, Diking and Filling. The section does not contain policies addressing impacts resulting from dredging and material placement. As such, dredging and material placement activities could be carried out in a manner that disrupts marine and wildlife habitats and water circulation, thereby causing adverse impacts on the environment.

The LUP does not adequately identify opportunities for beach replenishment. Without specific policy language, valuable beach quality material may be lost where it could be used to nourish an eroded beach within the region. Dredge material and material removed from erosion control and a flood control facilities that is deemed suitable for beach replenishment should be transported to appropriate beaches or into suitable long shore currents as called for in Section 30233 (b) and (d) of the Coastal Act.

Modifications are required to ensure consistency with Sections 30230, 30231 and 30233 of the Coastal Act.

Archaeological Resources

The Chapter 3 policy most applicable to this planning issue is:

Section 30244.

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Section 4.5.1 of the LUP addresses paleontological and archaeological resources. Policy 4.5-1 requires new development to protect and preserve resources from destruction and avoid and minimize impacts to such resources. The policy specifies that an in situ or site-capping plan or a recovery plan must be submitted if avoidance is not feasible. Policy 4.5.1-2 requires monitoring of grading activities, suspension of development, and preservation of the site for “a reasonable period of time” to allow a recovery plan to be completed, but does not require the submittal of a detailed monitoring plan.

Additionally, the LUP lacks a policy requiring preparation of a mitigation plan. If resources are determined to be significant, a mitigation plan considering various mitigation measures must be required. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. Mitigation plans must include a good faith effort to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, in situ preservation/capping, and placing cultural resource areas in open space. As submitted, the LUP does not contain sufficient detail to carry out Section 30244 of the Coastal Act.

Conclusion

As submitted, the proposed LUP is inconsistent with the resource protection policies of the Coastal Act, and cannot be certified.

2. Land Use and Development

Chapter 2 of the LUP addresses land use and development issues, including the identification of the kinds, location and intensity of uses allowed in the coastal zone. The proposed LUP update does not change any land use designations or increase the density or intensity of use from the certified LUP. However, the land use classification nomenclature has been modified. Land use categories are depicted on the Coastal Land Use Map, included in the back map pocket. Chapter 2 provides policies intended to address Coastal Act requirements relating to visitor-serving, recreational, coastal-dependent, and coastal-related land uses. New development, non-conforming development, and areas of deferred certification are also discussed.

Visitor-serving and Recreational Development

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The Chapter 3 policies most applicable to these planning issues are:

Section 30213.

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30221.

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222.

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30223.

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30250(c)

Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

The LUP contains six commercial designations—General Commercial, Recreational and Marine Commercial, Commercial Residential, Neighborhood Commercial, Commercial Office and Visitor-Serving Commercial. Only a few areas within the City have been designated as Visitor-Serving Commercial (CV) in the proposed LUP, including three existing major hotel sites, a block along West Coast Highway developed with motels and restaurants, and the Lido Village Commercial area. This represents only a small percentage of the commercially designated properties in the Newport Beach coastal zone. According to the City, the CV designation is intended to provide for accommodations, goods and services intended to primarily serve the needs of visitors. Many areas that are in fact tourist destinations, including the Newport Pier, Balboa Pier and Balboa Island, have not been designated as such. Instead, these areas have been designated General Commercial (CG) or Commercial Residential (CR). The General Commercial designation (referred to as Retail Service Commercial in the Zoning Code) is intended to provide for a wide range of commercial activities oriented primarily to

serve citywide or regional needs. The Commercial Residential designation allows general commercial uses on the ground floor and residential development above. The City has indicated that these land use designations have been applied more broadly in order to provide for flexibility in responding to market demands. The City opposes any changes in land use designations.

The Coastal Act protects and encourages low cost visitor and recreational facilities and gives priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over private residential, general industrial, or general commercial development. As proposed, the LUP fails to reflect a prioritization of visitor serving development in areas where such uses should be focused. The City's General Commercial designation allows uses that are not appropriate in a visitor-serving area. These include: Daycare; Residential Care; Building Materials and Services; Funeral and Internment Services; Laboratories; Health/Fitness Clubs; Research and Development; SRO Residential Hotels; Industry; and Mining and Processing Clubs and Lodges; Government Offices; Religious Assembly; Major Utilities; Animal Hospitals; Maintenance and Repair Services; Offices, Business and Professional (not serving visitors); Vehicle Sales and Vehicle Storage. Without specific controls on development within primary visitor serving cores, inappropriate uses could proliferate within tourist destination spots, resulting in inadequate provision of visitor services and facilities. While the needs of the local residents would be met, the needs of the visitor would not. As such, the LUP is inconsistent with the provisions of the Coastal Act designed to protect and encourage visitor and recreational uses in areas where such uses should be the focus.

Planning Study Areas

The LUP contains detailed narrative under Policy 2.1.1-1 describing "Planning Study Areas" throughout the City. The PS designation is intended for certain areas with unique land use and development characteristics. The following areas have been identified as Planning Study Areas: Lido Peninsula, Cannery Village, McFadden Square, Balboa Village, Balboa Bay Club, Newport Dunes. More specific regulations for each of the areas are provided in the narrative. The regulations address allowable uses and density limits. A Planning Study Area must be created for Marine Avenue on Balboa Island to ensure that this primary visitor-serving destination is similarly regulated.

Development Standards

Section 2.1.1 of the LUP establishes the type, density and intensity of land uses to be allowed. However, only the most basic development standards are provided. Parking requirements, setbacks and height restrictions are excluded. As discussed below, numeric standards are necessary to establish a clear standard of review when it comes time to implement the policies of the LUP.

The LUP includes general policies (2.9.3-1 through 2.9.3-12) addressing parking in the coastal zone. However, specific parking standards have not been provided. Section 30252 of the Coastal Act requires that new development maintain and enhance public

access to the coast by providing adequate parking or alternative means of transportation. When new development does not provide adequate on-site parking and there are inadequate alternative means of reaching the area (such as public transportation), users of that development are forced to occupy public parking that could otherwise be used by visitors to the coast. A lack of public parking and public transportation will discourage visitors from coming to the beach and other visitor-serving activities in the coastal zone. A parking deficiency will therefore have an adverse impact on public access. Numeric parking standards must be proposed so that they can be evaluated and found adequate under the public access policies of the Coastal Act. Approved standards must then be specifically referenced in the LUP to ensure adequate provision of on-site parking to minimize adverse impacts to public access.

Setbacks must be established in the LUP in order to determine how development will impact significant coastal resources including, but not limited to, bluffs, ESHA, wetlands, public access and recreation areas, and public views. Development adjacent to these areas must be strictly controlled to ensure the protection of such resources. Siting and design regulations must therefore be provided at the LUP stage.

Specific height standards must also be referenced in the LUP to ensure the protection of community character and scenic resources. Section 4.4.2 of the document discusses bulk and height limitations and describes the importance of maintaining community character and scale in the City. The LUP references the height restrictions established in the Shoreline Height Limitation Zone. However, the boundaries of the Shoreline Height Limitation Zone are not depicted graphically in the LUP. As such, it remains unclear where the various height restrictions apply. Additionally, numeric height limits for other areas within the coastal zone are not specified as policies in the LUP.

As submitted, the LUP lacks adequate development standards to allow for clear interpretation and accurate, consistent implementation of the policies. Without numeric standards, there will be great discretion in the manner in which the policies can be carried out. The document must include quantitative development standards such as height limits and parking standards in order to establish a standard of review for the Implementation Plan (IP). Where the Coastal Act is the standard of review for the LUP, the LUP will provide the standard of review for the IP. As such, it is necessary to have numeric standards established in the LUP to provide guidance and clarity.

Industrial Development

Industrial development is discussed in Section 2.6 of the LUP. The Chapter 3 policies most applicable to these planning issues are:

Section 30250 (b).

Where feasible, new hazardous industrial development shall be located away from existing developed areas.

Section 30260.

Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Sections 30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.

Section 30262.

Oil and gas development shall be permitted in accordance with Section 30260, if the following conditions are met:

- (a) The development is performed safely and consistent with the geologic conditions of the well site.*
- (b) New or expanded facilities related to such development are consolidated, to the maximum extent feasible and legally permissible, unless consolidation will have adverse environmental consequences and will not significantly reduce the number of producing wells, support facilities, or sites required to produce the reservoir economically and with minimal environmental impacts.*
- (c) Environmentally safe and feasible subsea completions are used when drilling platforms or islands would substantially degrade coastal visual qualities unless use of such structures will result in substantially less environmental risks.*
- (d) Platforms or islands will not be sited where a substantial hazard to vessel traffic might result from the facility or related operations, determined in consultation with the United States Coast Guard and the Army Corps of Engineers.*
- (e) Such development will not cause or contribute to subsidence hazards unless it is determined that adequate measures will be undertaken to prevent damage from such subsidence.*
- (f) With respect to new facilities, all oilfield brines are reinjected into oil-producing zones unless the Division of Oil and Gas of the Department of Conservation determines to do so would adversely affect production of the reservoirs and unless injection into other subsurface zones will reduce environmental risks. Exceptions to reinjections will be granted consistent with the Ocean Waters Discharge Plan of the State Water Resources Control Board and where adequate provision is made for the elimination of petroleum odors and water quality problems.*

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Where appropriate, monitoring programs to record land surface and near-shore ocean floor movements shall be initiated in locations of new large-scale fluid extraction on land or near shore before operations begin and shall continue until surface conditions have stabilized. Costs of monitoring and mitigation programs shall be borne by liquid and gas extraction operators.

While Section 2.6 of the LUP contains policies that give priority to coastal-dependent and coastal-related industrial development, it lacks direction for the siting of such development. To ensure consistency with the Coastal Act, new hazardous industrial development must be located away from developed areas where feasible. Coastal-dependent industrial development must be encouraged to locate or expand within existing sites where consistent with all other provisions of the LUP.

This section also explains the City's historical ban on onshore oil and gas exploration, drilling, production and refining. The policies contained in the LUP reflect the ban that is contained in the City Charter. However, no justification for such a ban was provided in the narrative. Additionally, such a ban is not appropriate in a land use plan in the absence of a comprehensive analysis demonstrating empirically that such a ban is consistent with the requirement of the Coastal Act policies cited above, such as Section 30262 of the Coastal Act. The Coastal Act allows oil and gas development if certain criteria are met. An outright prohibition on such development renders the LUP inconsistent with the Coastal Act.

Hazards

Section 2.8 deals with development issues related to hazards and protective devices. This section of the LUP acknowledges that the City is subject to hazards such as storm surges, beach and bluff erosion, landslides, slope failure and wildland fires. Earthquakes and tsunamis are also discussed. The Chapter 3 policies most applicable to these planning issues are:

Section 30235.

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253 (in part).

New development shall:

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- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Policies in Section 2.8.6 address shoreline erosion, beach replenishment, and the permitting and siting of shoreline protective devices. While generally adequate, these policies do not give proper consideration to alternative methods for protecting existing structures and public beaches. The construction of protective devices should only be considered after all other alternatives are exhausted. If alternatives exist, the construction of the protective device is not “required” pursuant to Section 30235. Where feasible, hazard avoidance, restoration of sand supply, beach nourishment, and removal and relocation of development must be considered. Greater emphasis must be placed on requiring new development to assure stability and limit erosion. While Policy 2.8.6-10 requires new structures to be sited to avoid the need for shoreline and bluff protective devices during the economic life of the structure, the policy does not go far enough to carry forward the provisions of Sections 30253 and 30235 of the Coastal Act, as discussed below.

As required by Section 30253, new development must assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. Section 30235 allows protective devices only when necessary to protect existing structures. This has been interpreted to apply only to principal structures and not accessory improvements, as accessory improvements may not be structures, and even where they are, again, they are generally capable of being relocated, thus removing the necessity for a protective device. As currently written, the LUP does not distinguish between principal and accessory structures. The LUP must make clear that only existing principal structures may be afforded protection if subject to hazard. The LUP must also integrate the Coastal Act requirement for new development to assure stability to avoid the need for protective devices. The incorporation of policies aimed at minimizing the construction of protective devices is necessary to avoid adverse impacts to shoreline processes.

The LUP contains policies addressing tsunamis in Section 2.8.2. While generally comprehensive, the section fails to include a provision requiring overnight visitor-serving facilities to provide tsunami information and evacuation plans. No mention is made of how new information will be incorporated into the City’s planning and preparedness efforts.

Conclusion

Therefore, as submitted, the proposed LUP is inconsistent with the hazard avoidance and development policies of the Coastal Act and must be denied.

3. Public Access and Recreation

Chapter 3 of the LUP addresses public access and recreation. The Chapter 3 policies most applicable to these planning issues are:

Section 30210.

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211.

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 (a).

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30212.5.

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213.

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Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Section 30214

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Section 30220.

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Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221.

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222.

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30222.5.

Ocean front land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses.

Section 30223.

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30224.

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Section 30252.

The location and amount of new development should maintain and enhance public access to the coast by...(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...

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The policies of Section 3.1 of the LUP describe shoreline access. Greater detail is necessary in these policies to ensure maximum provision of public access. Policies 3.1.1-11 and 3.1.1-12 require the applicant to provide an Offer to Dedicate (OTD) an easement for public access when it is determined that new development will cause or contribute to adverse public access impacts. Although this approach is intended to mitigate for public access impacts, no criteria are established for the siting or design of the OTDs. It is unclear from the policies where the OTDs should be located in relationship to the approved development and how wide they should be. Without more clear direction, ambiguity exists that could lead to poorly sited and narrow accessways. More specificity is also necessary to encourage the acceptance, improvement and opening of OTDs to ensure that impacts to public access are truly mitigated.

The LUP relies only on the acquisition of OTDs to mitigate for development impacts to public access. No mention is made of direct dedication instead of *offers* to dedicate. Direct dedication is a faster and simpler method of establishing an accessway, park or open space area. For example, direct dedications typically involve fewer and less complicated legal documentation than OTDs and direct dedications don't involve the same type of tracking and follow-up that an OTD does to assure the OTD is accepted and opened in a timely manner. In addition, the mitigation (the opened accessway, park or open space) would not lag (as it does when the accessway is created through an OTD, often for many years) behind the impact (the development). Direct dedication must be considered where feasible.

The LUP fails to identify access opportunities in areas where access is currently limited. The City asserts that new vertical access opportunities were investigated and determined to be infeasible due to the potential impacts to coastal bluffs and marine habitat, public safety concerns, and visual impacts. However, conditions may change in the future and a policy encouraging the creation of new accessways (even one that included appropriate restrictions to take account of the issues raised by the City) would ensure that opportunities are at least considered in areas where access is limited when new development is approved.

Section 3.3 addresses vessel launching, berthing and storage. These policies require the protection and expansion of boating facilities in Newport Beach. To ensure that the needs of all boat users are addressed, additional guidance must be included to encourage the provision of a variety of slip types. Without such direction, marinas may be developed with a disproportionate amount of large, high cost slips; thereby precluding use by boaters seeking a lesser cost recreational opportunity.

Conclusion

As submitted, the LUP does not provide sufficient specificity and guidance to ensure that public access and recreational opportunities are maximized. As such, the LUP must be denied.

4. Standards, Procedures and Definitions

Introduction

Chapter 1 (Introduction) explains the purpose, organization, general policies and background of the LUP. The history and character of the City of Newport Beach is also provided. Corrections and additions are necessary to clarify procedural requirements and process.

Section 1.3 (“General Policies”) lists overarching policies that are to guide interpretation and application of the specific policies in the LUP. This General Policies section improperly includes a “balancing” approach, which states:

When policies within the Coastal Land Use Plan conflict, such conflicts shall be resolved in a manner which on balance is most protective of significant coastal resources.

The Coastal Act does not authorize local governments to “balance” their LUP policies against each other, allowing one to override another, and thereby approving projects that are inconsistent with at least one LUP policy. The balancing provision is contained in Section 30007.5 of the Coastal Act, which states:

The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources.

The express language of that section refers only to conflicts between the policies “of the division,” meaning Division 20 of the Public Resources Code – the Coastal Act. In fact, one of the central purposes behind having city-specific LUPs is to generate policies that are tailored to the empirical realities of the city, rather than having to use more general policies such as those in Chapter 3 of the Coastal Act. These city-specific policies should eliminate instances where the application of generally-applicable policies to specific cases generates a conflict and the need for balancing. This limitation on the use of balancing is clear again in the restatement of the balancing authority in section 30200(b), which refers to conflicts “between the policies of this chapter,” so both sections are clear that balancing is only for Coastal Act policies and carrying out the provisions of the Coastal Act, not within LCPs. As such, this section of the LUP must be changed to avoid improper application of the balancing approach by the City

Glossary

The LUP includes a Glossary in Chapter 5. As submitted, the Glossary contains significant omissions. The following is a partial list of terms that are not included: Appealable Development, BMPs, Demolition, First Public Road, Non-Conforming Structure/Use and Sea Cliff. These terms show up in the policies and/or narrative of the LUP and must be defined to ensure clear understanding and application of the policies.

A number of definitions within the Glossary are generally accurate, but lack detail that will be valuable when interpreting the policies of the LUP. For example, the definition provided for Coastal Bluff fails to offer detail such as the differentiation between “coastal bluff” and “seacliff”. Wherever possible, these must be expanded and clarified in accordance with the Coastal Act.

The definition provided for Bluff identifies them as land masses with 10 feet or more in vertical extent. Providing a numeric standard in the Glossary that is not included in the policies of the LUP creates confusion. To ensure consistency, the definition must reflect the manner in which bluffs are defined within the LUP document.

C. Findings for Approval with Suggested Modifications

1. Coastal Resources

Chapter 4 of the Land Use Plan (LUP) inadequately addresses the protection of biological, scenic and paleontological resources in the coastal zone of Newport Beach. The Commission’s findings for denial of the LUP as submitted are herein incorporated by reference. The document must be modified as follows in order to be found consistent with the resource protection policies of the Coastal Act.

ESHA

As submitted, the LUP generally defines, but does not designate, environmentally sensitive habitat areas (ESHA). Sensitive habitat types have not been identified, nor have their boundaries been depicted. In order for the LUP to provide maximum protection of ESHA consistent with the Coastal Act, modifications must be made to the policies dealing with ESHA identification and designation. Primarily, the LUP must establish specific parameters for establishing the type, location and extent of ESHA. The LUP must be revised to reflect the presence of specific habitat types that are considered ESHA when they are deemed to have certain attributes. Preliminary mapping of potential ESHA boundaries must also be provided. These changes are accomplished through Suggested Modifications 62 through 67.

Suggested Modification 64 provides the supporting narrative which specifies that areas within the City of Newport Beach dominated by one of the habitats discussed in Section 4.1.1 are presumed to be ESHA, unless there are strong site-specific reasons to rebut that presumption. These include southern dune scrub, southern coastal bluff scrub, maritime succulent scrub, southern maritime chaparral, southern willow scrub, southern cottonwood willow riparian forest, southern arroyo willow forest, southern black willow forest, southern sycamore alder riparian woodland, and southern coastal purple needlegrass grassland. Wetland habitats within the City of Newport Beach that may meet the definition of ESHA include coastal brackish marsh, coastal freshwater marsh, southern coastal salt marsh, southern hardpan vernal pools, freshwater seeps, and alkali meadows. This modification, and the policy language of Suggested Modification 66, provides greater accuracy and specificity than the LUP submitted in identifying the

habitat types that are considered ESHA. To illustrate where these natural communities may occur, Suggested Modification 77 explains that portions of the Environmental Study Areas (ESA) listed in the LUP narrative are known to contain community types that meet the definition of ESHA. As provided for in Suggested Modification 67, the ESAs are to represent a preliminary mapping of areas containing potential ESHA. As modified, the LUP provides a clearer understanding of the way in which ESHA is identified, which habitat types are presumed to be ESHA, and where ESHA may be found.

Once ESHA has been identified, it is necessary to limit development within ESHA to only those uses that are dependent on the resource, consistent with 30240 of the Coastal Act. Moreover, even uses that meet the standard must not cause significant disruption of habitat values. Development adjacent to ESHA must also be sited to prevent impacts that would significantly degrade those areas. In denying the proposed LUP, the Commission found that more stringent policies were needed to address the siting and design of development impacting ESHA. As modified by Suggested Modification 68, it is made clear that development adjacent to ESHA must be sited and designed to prevent impacts that would disrupt or degrade those areas. Suggested Modification 69 explicates which uses can be considered “resource dependent” to ensure that only those uses are allowed within ESHA. These include limited public access improvements and minor educational, interpretive and research activities and development. Suggested Modification 71 prohibits new development that would necessitate fuel modification in ESHA.

In denying the proposed LUP, the Commission found that modifications are also necessary to provide development standards such as mitigation ratios and buffers to protect ESHA and other sensitive habitat. Suggested Modifications 72 and 73 require the provision of buffers and establish a minimum buffer size for ESHA. Suggested Modifications 74 through 76 address mitigation for allowable impacts to ESHA and other sensitive resources. Specific mitigation ratios are established for upland vegetation, coastal sage scrub and rare community types such as southern maritime chaparral, maritime succulent scrub, native grassland and southern mixed chaparral. The establishment of minimum mitigation standards is necessary given the difficulties of creating, restoring and maintaining functionally valuable habitat communities. In addition, direct mitigation furthers the goal of no net loss of coastal habitat resources. These modifications to the LUP ensure that impacts to ESHA are avoided wherever possible and mitigated in cases where resource-dependent impacts are permitted.

Suggested Modification 74 references mitigation in the form of habitat creation or substantial restoration. “Creation” means that habitat will be newly established in an area that does not currently contain that functional habitat type, but where the soils, topography, etc. are appropriate for long-term viability and may have supported the habitat in the past. “Restoration” means that habitat which is recognizable as belonging to a specific vegetation community, but which has been previously disturbed and/or contains exotic invasive species so as to reduce its functional value, will be enhanced to return the habitat area to overall health and typical functional value. “Substantial

restoration” is applicable to highly-degraded areas where the effective function of the habitat type has been lost, but which still contains remnant plants of the identified habitat. “Revegetation” means replanting with appropriate species, as is applicable to both restoration efforts in existing habitat, and to creation where habitat does not currently exist. These terms have been defined to provide further clarification of the intent of the new policy.

Furthermore, the Commission can only approve the LUP if a detailed process is incorporated to identify the location of ESHA and conduct a site-specific analysis at the time of an application for development. Suggested Modification 140 outlines the necessary review procedure and clarifies how decisions regarding biological resources are to be made. A clearly established environmental review process ensures that projects are properly evaluated by qualified professionals and considered by the decision-making body. This modification also requires coordination with other resource agencies to ensure that impacts to ESHA are avoided or minimized. As revised through the Suggested Modifications discussed herein, ESHA and other sensitive resources are protected in accordance with Section 30240 of the Coastal Act.

Natural Landforms/Coastal Bluffs

In denying the LUP, the Commission found the City’s method of defining coastal bluffs inadequately protective of coastal resources and inconsistent with past Commission practice. The City’s approach differentiates between altered and unaltered landforms when applying setback standards. This was done to provide a basis for applying differing setbacks for new development on bluff lots. Development on an unaltered bluff lot would require a greater setback than development on a bluff lot that had been previously graded and developed. Additionally, bluff face development would be allowed to continue where the bluff had been altered and a clear pattern of development had been established. For example, in areas like Ocean Boulevard in Corona del Mar, development has historically occurred down the bluff face to protect public views from the frontage street above. However, the Commission does not regulate development on coastal bluffs differently depending on whether or not the site has been previously graded. Coastal bluffs, as defined in the California Code of Regulations and in the City’s LUP Glossary, include bluffs that were subject to marine erosion within the last 200 years. The conditions on the ground at the time a project is proposed constitute the natural landform. Development standards must be applied based on geologic stability and scenic resource impacts. Suggested Modifications 119 through 133 address coastal bluff identification and provide standards for new development in order to protect natural landforms.

The policies of the LUP have been modified in a manner that acknowledges the difference between coastal bluffs currently subject to marine erosion and those that are not. Suggested Modification 127 requires all new blufftop development located on a bluff subject to marine erosion to be set back at least 25 feet from the bluff edge, while Suggested Modification 128 requires all new blufftop development located on a bluff *not* subject to marine erosion to be set back in accordance with the predominant line of

existing development in the subject area. Accessory improvements are subject to analogous restrictions through Suggested Modifications 129 and 130. It is made clear that all of these bluff setbacks shall be increased where necessary to ensure safety and stability of the development. Additionally, Suggested Modification 133 requires swimming pools located on bluff properties to incorporate leak prevention and detection measures.

Suggested Modification 122 clarifies that only private development on Ocean Boulevard determined to be consistent with the predominant line of development and necessary public improvements will be allowed on bluff faces. Any further alteration of bluff faces will be prohibited. The Commission makes these modifications to ensure stability and protect coastal views, while recognizing past alteration and development patterns in the City. It is not necessary or appropriate to distinguish between altered and unaltered bluffs or to say that bluffs are no longer considered “coastal bluffs” because they have been significantly graded.

As modified, the policies allow development to occur in much the same manner it currently does in infill areas. Suggested Modification 132 maintains approved bluff edge setbacks for the coastal bluffs within the planned communities of Castaways, Eastbluff, Park Newport, Newporter North (Harbor Cove), and Bayview Landing. Suggested Modification 120 requires more stringent public access/setback requirements for new planned communities.

Development that currently exists on the bluff face on Ocean Boulevard will be allowed to continue in accordance with the predominant line of development if deemed geologically feasible, as addressed in Suggested Modification 131. Similarly, Suggested Modification 125 specifies that the bluffs along Bayside Drive that have been cut and filled by the Irvine Terrace and Promontory Point development will be subject to the setback restrictions established for bluffs not subject to marine erosion. As such, the “predominant line of development” standard will apply there.

Coastal canyon development will be regulated in much the same way. Where there was previously no setback for development on canyon lots, there is now a requirement to comply with the “predominant line of development.” Suggested Modification 134 provides this new standard for development along Buck Gully and Morning Canyon. The addition of a canyon setback regulation in these areas will prevent significant landform alteration and limit encroachment into natural habitats.

As modified, more conservative setback standards would be applied to potentially hazardous lots, thereby providing better assurance of long-term stability. When development is properly sited, the need for construction of protective devices to support new development is avoided. Therefore, the Suggested Modifications ensure conformance with Sections 30253 and 30251 of the Coastal Act.

Marine Resources

Wetlands

In denying the LUP as submitted, the Commission found that the wetland policies containing guidance for defining and delineating wetlands were inconsistent with past Commission decisions. Also lacking were development standards and procedures for the establishment of buffers, mitigation ratios and monitoring programs. Suggested Modifications 88 through 93 correct these deficiencies and clarify any inconsistencies between the LUP and past Commission action, thereby ensuring consistency with the Coastal Act.

Suggested Modifications 89 and 90 deal with the definition of wetland and the manner in which wetlands are delineated. As submitted, Policy 4.2.2-1 of the LUP contains a statement that wetlands do not include vernal wet areas where the soils are not hydric. However, the Commission has previously found these types of vernal wet areas generally to qualify as wetlands, especially where there is a preponderance of wetland vegetation. This statement has been stricken from the policy in order to ensure that the wetland definition is not improperly limited in the LUP.

To further avoid the application of an unduly narrow definition of wetlands, Policy 4.2.2-2 has been stricken through Suggested Modification 90. This policy addresses ambiguity in wetlands delineation. As written, the policy allows a variety of factors to be considered along with the presence or absence of more than one wetland parameter to determine whether an area meets the definition of a wetland and to delineate wetland boundaries. The City's approach to defining and delineating wetlands is inconsistent with the California Code of Regulations definition of wetland, which only requires the presence of one parameter to constitute a wetland.

Although vegetation is often the most readily observed parameter, sole reliance on vegetation or either of the other parameters as the determinant of wetlands can sometimes be misleading. Many plant species can grow successfully in both wetlands and non-wetlands, and hydrophytic vegetation and hydric soils may persist for decades following alteration of hydrology that will render an area a non-wetland. Where ambiguities in wetland delineation exist due to the demonstrated presence of both upland and wetland characteristics, factors other than the standard field indicators of wetland hydrology, wetland vegetation and wetland soils may be analyzed as part of the delineation. Such factors may include topography, soil permeability, drainage patterns, adjacency to identified wetlands, and comparisons of hydrology at the ambiguous site and at nearby upland and wetland reference sites following significant rainfall events. The simple lack of field indicators of hydrology during a routine delineation is not strong evidence of upland characteristics.

The elimination of Policy 4.2.2-2 is necessary to prevent misinterpretation of the Commission's one parameter test. The corresponding narrative has been stricken

through Suggested Modification 88. As modified, the LUP will contain appropriate protections for wetlands, consistent with Section 30233 of the Coastal Act.

Suggested Modification 91 establishes minimum buffer sizes for wetlands to ensure that wetlands are adequately protected from potential impacts of adjacent development. The modification requires a minimum 100-foot wide buffer, but creates a two-part test in which a smaller buffer could be accepted. Smaller wetland buffers may be allowed only where it can be demonstrated that 1) a 100-foot wide buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the wetland given the site-specific characteristics of the resource and of the type and intensity of disturbance. Allowing for the application of a narrower buffer is necessary to accommodate development on shallow lots where development cannot be sited any further inland, such as bulkheaded properties along the Bay and those along the Semeniuk Slough. Even when a narrower buffer is allowed, the buffer must be proven to be amply protective of the resource. Establishment of wetland buffer standards is necessary to protect wetland resources consistent with Section 30231 of the Coastal Act.

Suggested Modifications 92 and 93 clarify that haul-out boat yards are not an allowable use in wetlands and open coastal waters. These facilities could be accommodated immediately adjacent to open coastal waters and their existence is not dependent on being located in wetlands or open coastal waters. As such, the policy modification is necessary to ensure that only uses consistent with Section 30233 of the Coastal Act are allowed in coastal waters and wetlands.

To further protect wetland resources, Suggested Modifications 96 and 97 provide standards for mitigation and monitoring when wetland impacts are permitted. As modified, adverse impacts must be mitigated at a ratio of 3:1 for impacts to seasonal wetlands, freshwater marsh and riparian areas, and at a ratio of 4:1 for impacts to vernal pools and saltmarsh (the ratio representing the acreage of the area to be restored/created to the acreage of the area diked or filled), unless the applicant provides evidence establishing, and the approving authority finds, that restoration or creation of a lesser area of wetlands will fully mitigate the adverse impacts of the dike or fill project. The policy specifies that the mitigation ratio can not be less than 2:1 unless, prior to the development impacts, the mitigation is completed and is empirically demonstrated to meet performance criteria that establish that the created or restored wetlands are functionally equivalent or superior to the impacted wetlands. The mitigation shall occur on-site wherever possible. Where not possible, mitigation should occur in the same watershed.

The mitigation ratios established by the Suggested Modification are consistent with past Commission action. The success rate of wetlands restoration is less than 100%. To compensate for the potential that a wetlands creation or restoration project is not successful, the Commission has traditionally required more than a 1:1 mitigation ratio (i.e. the creation of more than one acre of wetlands for every one acre of wetland which is filled). Creating more wetlands than would be lost increases the potential that the

number of acres of created wetlands which successfully establish, in the end, is at least equal to the number of wetlands filled. Furthermore, a wetland mitigation ratio in excess of one to one can compensate for wetland acreage and functional capacity lost during the establishment and maturation of the mitigation area. Many actions by the Commission have required a mitigation ratio of four to one (e.g. 5-90-913, 5-92-408, 5-93-276, among others).

If an appropriate restoration site is unavailable, Policy 4.2.3-9 (C) allows applicants to pay an in-lieu fee to a public agency for the purchase and restoration of a wetland area within the same general region (e.g. same estuary). The use of in-lieu fees is only allowed for small projects with minor amounts of fill where mitigation for such fill by an individual would be impractical and excessive. The in-lieu fee approach is only appropriate in cases where fill cannot be avoided, such as the construction of a bulkhead to protect an existing development.

Eelgrass

The LUP presents a conceptual eelgrass mitigation program for establishing a baseline of eelgrass and then allowing projects that impact eelgrass to occur so long as the baseline is maintained. The narrative of Suggested Modification 104 makes clear that the program has yet to be fully reviewed and will require approval from various resources agencies. Specifically, any eelgrass program will require Commission review, as the eelgrass meadows are located within the Commission's area of original jurisdiction. Chapter 3 of the Coastal Act will be the standard of review for such a program.

Policy 4.2.5-2 specifies that mitigation is not required where eelgrass migrates from a mitigation area into an area that did not previously contain eelgrass. This is inconsistent with standard NMFS practice under the Southern California Eelgrass Mitigation Policy. Eelgrass that migrates commands the same level of protection as that in the mitigation area. As such, Suggested Modification 105 strikes this policy. The protection of eelgrass is necessary to ensure biological productivity of coastal waters, consistent with Section 30231 of the Coastal Act.

As submitted, Policy 4.2.5-4 allows successful eelgrass restoration sites to serve as mitigation sites for City projects and as a mitigation bank for private dredging impacts. The mitigation program has not yet been reviewed. This policy has been stricken through Suggested Modification 106. The removal of this policy ensures that all eelgrass restoration sites will be reserved until such time as a mitigation program is reviewed and approved.

Water Quality

The LUP includes policies that address preserving and restoring natural hydrologic conditions on site, such as retention and infiltration; pollution prevention and source control practices; post-construction phase runoff control and Best Management

Practices (BMPs); reduction of impervious surfaces; construction phase runoff control; BMP maintenance; water quality education; and waste discharge systems. These policies, as submitted, were deemed adequate as submitted to carry out Sections 30230, 30231 and 30232 of the Coastal Act.

However, not all of the policies included in the LUP were sufficiently detailed to protect water quality in Newport Beach's coastal zone, especially with regards to specific references to state and regional restrictions and goals. These policies have been expanded to include references to the specific load allocation for Newport Harbor and the Municipal Stormwater permit approved by the Regional Water Quality Control Board. Suggested Modifications 110 through 113 provide additional detail, thereby ensuring conformance with Sections 30230, 30231 and 30232 of the Coastal Act.

Dredging and Beach Nourishment

Suggested Modifications 94, 100, 101, 102 and 103 address appropriate dredging methods and the placement of dredged material. Suggested Modification 100 makes clear that dredging must be carried out in a manner that avoids disruption to marine and wildlife habitats and water circulation. Material placement must also be placed in a manner that minimizes adverse impacts on the environment, as specified by Suggested Modification 101. Lastly, Suggested Modifications 102 and 103 are necessary to explicate that the material removed from erosion control and a flood control facilities that is deemed suitable for beach replenishment should be transported to appropriate beaches or into suitable long shore currents. The incorporation of these additions and changes ensures consistency with Sections 30230, 30231 and 30233.

Archaeological Resources

Section 4.5.1 of the LUP addresses Paleontological and Archaeological Resources. In denying the LUP, the Commission found the policies did not contain sufficient direction for the preparation and submittal of monitoring and mitigation plans. Suggested Modification 137 requires submittal of a mitigation plan. Mitigation measures considered in the plan may range from in-situ preservation to recovery and/or relocation. Suggested Modification 138 requires in situ preservation and avoidance to be considered before paleontological or archaeological materials are donated to a public or private institution. Suggested Modification 139 requires the submittal of an archeological/cultural resources monitoring plan. As modified, the LUP offers adequate protection of archaeological resources consistent with Section 30244 of the Coastal Act.

Conclusion

Therefore, as revised through the suggested modifications, the Commission finds that the Coastal Resource Protection chapter of the LUP is in conformance with and adequate to carry out the resource protection policies of the Coastal Act.

2. Land Use and Development

Visitor-serving and Recreational Development

In denying the LUP, the Commission found that many of Newport Beach's tourist destinations, including the Newport Pier, Balboa Pier and Balboa Island, have not been designated as visitor-serving areas. Section 30222 of the Coastal Act prioritizes use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over private residential, general industrial, or general commercial development. The LUP must carry forward this requirement.

Suggested Modifications 5, 6 and 7 include narrative revisions that clearly identify the boundaries of clearly visitor-serving areas within the City, including the core areas of McFadden Square at the Newport Pier, Balboa Village at the Balboa Pier, and Marine Avenue on Balboa Island. Suggested Modification 18 specifies that non-priority commercial uses must be prohibited on the ground floor within these primary visitor-serving cores. As modified, the land use designations remain unchanged, but a policy specifies which types of commercial uses will not be permitted. These include Daycare; Residential Care; Building Materials and Services; Funeral and Internment Services; Laboratories; Health/Fitness Clubs; Research and Development; SRO Residential Hotels; Industry; Mining and Processing; Clubs and Lodges; Government Offices; Religious Assembly; Major Utilities; Animal Hospitals; Maintenance and Repair Services; Offices, Business and Professional (not serving visitors); Vehicle Sales and Vehicle Storage. Without a specific restriction, the aforementioned commercial uses would be permitted under the RSC designation. The restrictions on non-priority commercial uses are intended to apply to proposals to construct facilities for the enumerated uses. Thus, the restriction on religious assembly, for example, is not intended to, and does not, restrict the actual act of assembly (which is also likely to be exempt as a "temporary event"); it is intended only to prohibit the construction of permanent facilities designated exclusively for religious use in the visitor-serving areas.

A lot-by-lot land use survey conducted in the summer of 2005 shows that the majority of these non-priority uses are not currently in existence in the visitor serving cores. As such, the policy change will not result in significant change in the existing land use pattern. The policy change is intended to maintain the uses there now and retain visitor-serving cores within the City. As modified, the LUP ensures that certain inappropriate uses are prohibited, thereby ensuring the continued provision of visitor-serving uses in prime areas. To further ensure the provision of these uses, Suggested Modification 16 requires the protection of popular visitor destination points for recreational uses.

Suggested Modification 17 requires upland areas to be reserved for coastal recreation uses. Suggested Modification 19 makes clear that any use, not just commercial uses, on a beach that interferes with public access or enjoyment of coastal resources shall be prohibited. Suggested Modification 20 protects and encourages facilities that serve

marine related businesses and industries. As modified, visitor-serving destinations and recreational uses are protected in accordance with the Coastal Act.

Planning Study Areas

As described in the preceding section, Suggested Modifications 5, 6 and 7 expand the policy narrative of 2.1.1-1 to include a geographic description of primary visitor-serving cores within the City. These modifications also outline inappropriate land uses for primary visitor-serving cores. Suggested Modification 18 adds a new policy that reiterates which uses are prohibited in these areas.

Development Standards

Suggested Modification 12 provides a reference to the development standards of the City's Zoning Code in the General Development Policies of the LUP. This modification, suggested by the City, establishes a link to the Zoning Code standards related to building placement, height and bulk. Suggested Modification 40 requires parking to be provided in accordance with the standards established in the Zoning Code. Height limits are established through Suggested Modification 117, which also references the Zoning Code. The height limits currently allowed in the coastal zone are deemed appropriate to maintain community character and protect views. Nonetheless, Suggested Modification 118 is required to restrict projections above curb height on Ocean Boulevard to protect public views. A change to the standards affecting the coastal zone would require an LUP amendment.

As modified, the LUP provides adequate development standards to allow for clear interpretation and accurate implementation of the policies.

Industrial Development

New policies have been added to address the siting of industrial development in the coastal zone. Suggested Modification 24 requires new hazardous industrial development to be located away from existing developed areas. Suggested Modifications 25 and 26 encourage coastal dependent industrial uses to locate or expand within existing sites and prioritizes coastal dependent industrial uses over other industrial uses on or near the shoreline. These modifications are necessary to find the LUP consistent with Sections 30250(b) and 30260 of the Coastal Act.

Suggested Modifications 27 and 28 strike the City's prohibition of onshore oil facilities because they are in direct conflict with Section 30262 of the Coastal Act. Nevertheless, omitting this ban in the LUP has no effect on the content or implementation of the City Charter.

Hazards

The hazard policies of Section 2.8 have been revised and supplemented through Suggested Modifications 29 through 36. Suggested Modification 29 offers a reiteration of Section 30253 of the Coastal Act, requiring new development to assure stability to avoid the need for a protective device. This policy would apply to all development in potentially hazardous sites, including bluff and beachfront lots.

Suggested Modification 30 addresses the provision of tsunami information and evacuation plans at overnight visitor-serving facilities. As modified, coastal visitors would be provided the information necessary to safely leave the area if necessary. To further protect against hazards resulting from tsunamis, Suggested Modification 31 requires the City to periodically update its policies to reflect current tsunami data, including inundation maps and design standards.

Suggested Modification 32 addresses shoreline management plans for areas subject to wave hazards and erosion. This modification makes clear that management plans must evaluate the feasibility of hazard avoidance, restoration of sand supply, beach nourishment and planned retreat before considering any other method of protection. Similarly, Policy 2.8.6-7 has been modified through Suggested Modification 34 to clarify that protective devices should only be considered after the methods listed above. Suggested Modification 33 makes policy language changes to clarify that protective devices should only be considered to protect principal structures and only affords such protection unless a waiver of future shoreline protection was required by a previous coastal development permit. As modified, the policy reflects the Commission's interpretation and application of Section 30235 of the Coastal Act. Lastly, Suggested Modification 35 makes clear that owners of bluff properties (not only beach and shoreline) are required to record waivers of future shoreline protection when new development is approved. As modified, the policies are in conformance with Sections 30253 and 30235 of the Coastal Act.

Conclusion

Therefore, as modified through the suggested modifications, the Commission finds that the Land Use and Development chapter of the LUP is in conformance with and adequate to carry out the development policies of the Coastal Act.

3. Public Access and Recreation

In denying the LUP as submitted, the Commission found the policies of the LUP insufficient to carry out the public access and recreation requirements of the Coastal Act. Suggested Modifications 42 through 61 address inadequacies and offer additional language to maximize public access opportunities.

Suggested Modification 42 clarifies that public access to coastal waters and tidelands is protected. Suggested Modifications 43, 44 and 45 deal with direct dedication and offers to dedicate (OTD) public accessways. Policies 3.1.1-11 and 3.1.1-12 have been

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modified to clarify the siting and sizing requirements of dedicated accessways. More specificity has also been added to these policies to encourage the acceptance, improvement and opening of OTDs to ensure that impacts to public access are truly mitigated at the time of development. As addressed in the Commission's denial of the LUP, the LUP relies only on the acquisition of OTDs to mitigate for development impacts to public access. Therefore, policy revisions have been made to encourage direct dedications where feasible. These additions ensure that public access is provided in accordance with Sections 30210 and 30212 of the Coastal Act.

To further ensure the maximum provision of public access, Suggested Modification 50 adds a policy encouraging the creation of new public accessways to ensure that access opportunities are at least considered when new development is proposed. This policy applies in areas such as the Shorecliffs community, where the streets are public but all accessways to the beach are private. Opportunities for future accessways must also be reflected on the access map, as required by Suggested Modification 51.

The policies regarding the protection and expansion of boating facilities in Newport Beach have been supplemented by Suggested Modification 60. To ensure that the needs of all boat users are addressed, additional guidance has been included to encourage the provision of a variety of slip types. As modified, lower cost recreational opportunities are protected, consistent with Section 30213 of the Coastal Act.

The inadequate provision of parking and the creation of private gated communities can adversely impact public access. Suggested Modifications 54, 55, 56 and 57 prohibit the establishment of new gated communities and preferential parking districts that will impact public access. These modifications are required to ensure the protection of public access consistent with Sections 30210 and 30212 of the Coastal Act.

Conclusion

Therefore, as modified through the suggested modifications, the Commission finds that the Public Access and Recreation chapter of the LUP is in conformance with and adequate to carry out the public access and recreation policies of the Coastal Act.

4. Standards, Procedures and Definitions

Various corrections and changes that did not fall within the issue areas cited above are addressed here. Suggested Modification 1 requires that all maps within the document be numbered. This will provide easier reference within the LUP document.

Modifications have been made to the introductory chapter of the LUP to clarify procedural matters. Suggested Modification 2 describes the physical boundaries to which the LUP applies. Suggested Modification 3 removes the provision that would allow the City to resolve conflicts between policies in the LUP through “balancing.” As discussed in the Commission’s denial of the LUP, balancing is used to resolve conflicts between Coastal Act policies. Suggested Modification 4 makes clear how coastal development permits will be considered after certification. The paragraph now makes clear that after certification of an LCP, coastal development permit authority is delegated to the appropriate local government. In approving coastal development permits, the local government must make the finding that the development conforms to the certified LCP. The paragraph also makes clear that the Commission will retain permit jurisdiction in certain areas and have appeal authority under certain circumstances.

Glossary changes are addressed in Suggested Modifications 141 through 166. Definitions have been expanded and clarified so that they are consistent with the Coastal Act, California Code of Regulations or the Commission’s use of the word or term to ensure interpretation of policies in accordance with the Coastal Act.

Conclusion

Therefore, as modified through the suggested modifications, the Commission finds that the Introduction and Glossary of the LUP are in conformance with and adequate to carry out the policies of the Coastal Act.

VII. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with a local coastal program (LCP). Instead, the CEQA responsibilities are assigned to the Coastal Commission. Additionally, the Commission’s Local Coastal Program review and approval procedures have been found by the Resources Agency to be functionally equivalent to the environmental review process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an environmental impact report for each local coastal program submitted for Commission review and approval. Nevertheless, the Commission is required when approving a local coastal program to find that the local coastal program does conform with the provisions of CEQA.

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The proposed LUP amendment has been found not to be in conformance with several Coastal Act policies regarding protecting environmentally sensitive habitat areas, coastal bluff development, protection of the marine habitat, and promoting visitor serving uses. Thus, the LUP amendment is not adequate to carry out and is not in conformity with the policies of Chapter 3 of the Coastal Act. Furthermore, the proposed LCP amendment would result in significant adverse environmental impacts within the meaning of the California Environmental Quality Act. To resolve the concerns identified suggested modifications have been made to the City's Land Use Plan. Without the incorporation of these suggested modification; the LUPA, as submitted, is not adequate to carry out and is not in conformity with the policies of Chapter 3 of the Coastal Act. The suggested modifications minimize or mitigate any potentially significant environmental impacts of the Land Use Plan Amendment. As modified, the Commission finds that approval of the Land Use Plan amendment will not result in significant adverse environmental impacts within the meaning of the California Environmental Quality Act.

Given the proposed suggested modifications, the Commission finds that the City of Newport Beach Local Coastal Program Amendment 1-04, as modified, will not result in significant unmitigated adverse environmental impacts under the meaning of the CEQA. Further, future individual projects will require coastal development permits issued by the Coastal Commission (until such time as the City receives full LCP certification). Throughout the coastal zone, specific impacts associated with individual development projects are assessed through the coastal development permit review process; thus, an individual project's compliance with CEQA would be assured. Therefore, the Commission finds that there are no feasible alternatives within the meaning of CEQA that would reduce the potential for significant adverse environmental impacts.

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**Item Th 8d****ADDENDUM**

October 11, 2005

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM Th8d, City of Newport Beach Land Use Plan Amendment 1-04 (LUP Update)** FOR THE COMMISSION MEETING OF **October 13, 2005**

REVISIONS TO SUGGESTED MODIFICATIONS

Commission staff recommends the following revisions to the Suggested Modifications of the staff report, as shown below. Many of the changes below come at the request of and/or respond to comments received from the City of Newport Beach. Language to be deleted is shown in ~~highlighted strike-out~~ and new language is shown in **highlighted bold, underlined italic within brackets**.

1. Suggested Modification 6, page 13

It has come to staff's attention that there are public facilities within the Balboa Village and Marine Avenue visitor serving core areas. The restriction on non-priority commercial uses is not intended to apply to public facilities. Therefore, staff recommends the following revision:

6. Section 2.1.1, Planning Study Areas, Planning Study Area 4 (Balboa Village),
Modify last paragraph on page 2-8 as follows:

Although the Balboa Village provides a number of businesses that are oriented to visitors of the coastal zone, a wide range of commercial uses need to be permitted in order to maintain year-around economic viability. **However, within the primary visitor-serving core, non-priority commercial uses are prohibited on the ground floor. The Balboa Village primary visitor-serving core is bounded to the west by Adams Street, to the north by the Newport Harbor, to the east by A Street, and to the south by the sandy beach, excluding properties currently designated and constructed as residential uses [or as public facilities].**

2. Suggested Modification 15, page 15

The primary purpose of regulating additions and repairs to non-conforming structures is to protect coastal resources. The following changes to subsections 3 and 5 specifically address that issue.

15. 2.2.5-1 Legally established nonconforming structures may be maintained and repaired, **as specified by the terms of this policy**. Interior alterations, structural

alterations, and additions shall be limited as follows. **Individual project review will determine when a coastal development permit is required.**

1. Nonstructural interior alterations shall not exceed 50 percent of the replacement cost of a nonconforming structure.
2. Alteration of more than 25 percent of the structural elements of a nonconforming structure shall be subject to discretionary review and approval by the City.
3. Additions shall be permitted to structures that are legally nonconforming due to reasons other than for parking, open space, **resource issues [protection]**, floor area, or building bulk. Additions of more than 25 percent of the gross floor area of a nonconforming structure shall be subject to discretionary review and approval by the City.
4. No alterations or additions to a nonconforming structure shall increase the degree of the structure's nonconformity.
5. **When proposed development would involve demolition or replacement of 50 percent or more of the exterior walls of an existing structure [that is legally non-conforming due to a coastal resource protection standard], the entire structure must be made to conform with all current development standards and applicable policies of the Coastal Land Use Plan.**

3. Suggested Modification 18, pages 15-16

The restriction on non-priority uses is intended to apply to commercial properties only, as indicated by the following change:

18. **Prohibit the following non-priority commercial uses on the ground floor of [commercial] properties within the primary visitor-serving areas of McFadden Square (PSA 3) and Balboa Village (PSA 4), and along Marine Avenue (PSA 7):...**

4. Suggested Modification 60, page 21

By replacing the term "slips" with "berthing opportunities" the policy also encourages a variety of anchorages and moorings to be provided.

60. New Policy (Section 3.3.2) **Provide a variety of slip sizes [berthing opportunities] reflecting State and regional demand for slip size and affordability [throughout Newport Harbor].**

5. Suggested Modification 119, pages 36-39

The reference to Corona del Mar is somewhat vague and only was intended to apply to a specific geographic area. That specific area is located on Pacific Drive, where development occurs on the face of the slope/bluff. Therefore, the reference is stricken in the "Other Landform" narrative and Pacific Drive is included in the policies referring to bluff face

development. The reference to Newport Heights was also removed from this paragraph to ensure that a full analysis be conducted before determining whether or not the landforms in this area constitute coastal or non-coastal bluffs.

119. Section 4.4.3 Narrative, Change last paragraph—"Other Landforms"

Other Landforms

Some of the edges of Newport Mesa and the San Joaquin Hills are located a considerable distance from the shoreline, but are still highly visible from public view points, roadways, or the water. These areas include the slopes and non-coastal bluffs of Newport Heights and Corona del Mar. These areas have moderate to steep slopes, accentuated in places by gullies, ravines, and rock outcroppings. In order to protect the overall visual quality of the coastal zone, new development in these areas need to be sited and designed to minimize the alteration of natural land forms and to be visually compatible with the character of surrounding areas.

6. Suggested Modification 122, page 39

There is extensive development of the bluff face along Pacific Drive. Development in this area will be allowed to continue on the bluff face to be consistent with the existing predominant development pattern. However, the policy ensures that bluff face development is limited to private development determined to be consistent with the predominant line of existing development or public improvements providing public access, protecting coastal resources, or providing for public safety.

122. 4.4.3-3. In areas where the coastal bluff remains essentially unaltered, ~~Prohibit~~ development on bluff faces, except **private development on coastal bluff faces along Ocean Boulevard, and Carnation Avenue [and Pacific Drive] in Corona del Mar determined to be consistent with the predominant line of existing development or** public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize alteration of the bluff face, to not contribute to further erosion of the bluff face, and to be visually compatible with the surrounding area to the maximum extent feasible.

7. Suggested Modification 127, pages 40-41

The City has conducted research regarding the predominant line of development in coastal bluff neighborhoods and has found that development ranges from approximately 18 to 44 feet from the bluff edge. The Commission typically requires a 25-foot minimum structural setback from the bluff edge to ensure stability and protect coastal views. The following change to the suggested policy ensures that a minimum 25-foot setback is maintained, but requires a greater setback when required to be in conformance with the predominant line of development.

127. New Policy (Section 4.4.3): **Require all new blufftop development located on a bluff subject to marine erosion to be set back [sited in accordance with the predominant line of existing development in the subject area] at least [, but not less than] 25 feet from the bluff edge. This requirement shall apply to the**

principal structure and major accessory structures such as guesthouses and pools. The setback shall be increased where necessary to ensure safety and stability of the development.

8. Suggested Modification 129, page 41

The following change to the suggested policy ensures that a minimum 10-foot setback is maintained for accessory improvements, but requires a greater setback when required to be in conformance with the predominant line of development.

129. New Policy (Section 4.4.3): **On bluffs subject to marine erosion, require new accessory structures such as decks, patios and walkways that do not require structural foundations to be sited [in accordance with the predominant line of existing development in the subject area] at least [, but not less than] 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, instability or other hazards.**

9. Suggested Modification 131, page 41

As stated above, there is extensive development of the bluff face along Pacific Drive. Development in this area will be allowed to continue on the bluff face to be consistent with the existing development pattern. The policy ensures that development on the bluff face will be controlled to minimize further alteration.

131. New Policy (Section 4.4.3): **Where principal structures exist on coastal bluff faces along Ocean Boulevard and Carnation Avenue [and Pacific Drive] in Corona del Mar, require all new development to be sited in accordance with the predominant line of existing development in order to protect public coastal views. Establish a predominant line of development for both principal structures and accessory improvements. The setback shall be increased where necessary to ensure safety and stability of the development.**

10. Insert New Suggested Modification 167

The following policy has been inserted to make clear that docks are considered an allowable use within intertidal areas of the Newport Harbor. City staff expressed concern that dock and shoreline protective device projects would be considered unallowable fill of wetlands and would therefore be prohibited. However, the Coastal Act recognizes that recreational docks are allowable under Coastal Act Section 30233 if certain parameters are met. The circumstances under which shoreline protective devices would be allowed are covered by policies in Section 2.8.6 of the LUP, as changed by the suggested modifications.

167. New Policy (Section 4.2.3): Continue to permit recreational docks and piers as an allowable use within intertidal areas in Newport Harbor.

REVISIONS TO FINDINGS

Commission staff recommends the following revisions to the Findings of the staff report, as shown below. Language to be deleted is shown in ~~strike-out~~ and new language is shown in **bold, underlined italic**.

1. Section II (B), Procedural Requirements, page 7

Modify the text as follows to reflect that adoption of the CLUP by the City of Newport Beach will require a separate action by the City Council if the Coastal Commission approves the updated LUP with suggested modifications.

B. Procedural Requirements

Pursuant to Section 13551(b) of Title 14 of the California Code of Regulations, a resolution for submittal of an LUPA must indicate whether the local coastal program amendment will require formal local government adoption after Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513 and 30519. The City of Newport Beach's submittal indicates that this LCP amendment will ~~take effect upon Commission certification~~ **require formal local government adoption after Commission approval**.

2. Section VI (C) (1), page 78

The ESA mapping is not intended to exclude areas which may meet the definition of ESHA, but are not mapped as ESAs. Modify first full paragraph as follows:

Suggested Modification 64 provides the supporting narrative which specifies that areas within the City of Newport Beach dominated by one of the habitats discussed in Section 4.1.1 are presumed to be ESHA, unless there are strong site-specific reasons to rebut that presumption. These include southern dune scrub, southern coastal bluff scrub, maritime succulent scrub, southern maritime chaparral, southern willow scrub, southern cottonwood willow riparian forest, southern arroyo willow forest, southern black willow forest, southern sycamore alder riparian woodland, and southern coastal purple needlegrass grassland. Wetland habitats within the City of Newport Beach that may meet the definition of ESHA include coastal brackish marsh, coastal freshwater marsh, southern coastal salt marsh, southern hardpan vernal pools, freshwater seeps, and alkali meadows. This modification, and the policy language of Suggested Modification 66, provides greater accuracy and specificity than the LUP submitted in identifying the habitat types that are considered ESHA. To illustrate where these natural communities may occur, Suggested Modification 77 explains that portions of the Environmental Study Areas (ESA) listed in the LUP narrative are known to contain community types that meet the definition of ESHA. As provided for in Suggested Modification 67, the ESAs are to represent a preliminary mapping of areas containing potential ESHA. **The mapping is not intended to be exhaustive, as ESHA may be found to exist outside the boundaries of the ESAs. For example, ESHA was identified at Bayview Landing, which is not an ESA. Wherever habitat meets ESHA criteria, it must be identified and protected as such.** As modified, the LUP provides a clearer understanding of the way in which ESHA is identified, which habitat types are presumed to be ESHA, and where ESHA may be found.

2. Section VI (C) (1), page 80

Modify first full paragraph as follows:

The policies of the LUP have been modified in a manner that acknowledges the difference between coastal bluffs currently subject to marine erosion and those that are not. Suggested Modification 127 requires all new blufftop development located on a bluff subject to marine erosion to be set back **in accordance with the predominant line of development, but not less than** at least 25 feet from the bluff edge, while Suggested Modification 128 requires all new blufftop development located on a bluff *not* subject to marine erosion to be set back in accordance with the predominant line of existing development in the subject area. Accessory improvements are subject to analogous restrictions through Suggested Modifications 129 and 130. It is made clear that all of these bluff setbacks shall be increased where necessary to ensure safety and stability of the development. Additionally, Suggested Modification 133 requires swimming pools located on bluff properties to incorporate leak prevention and detection measures.

3. Section VI (C) (1), page 82

Insert the following paragraph after last full paragraph:

Suggested Modification 167 makes clear that docks will continue to be considered an allowable use within the intertidal areas Newport Harbor. There is a long history of recreational docks and piers existing in Newport Harbor. There is also an extensive record of Commission approvals of docks and piers. Pursuant to the requirements of Section 30233 to only approve the least environmentally damaging feasible alternative, the Commission has limited the size of piers/pier platforms and their pilings, the size and quantity of pilings for dock floats, etc. to that which is legitimately necessary for boating related purposes. The Commission has sought to avoid and minimize impacts to eelgrass beds with size and siting limitations. These controls will ensure that the continued permitting of docks in the Harbor will be for legitimate boating purposes and will minimize any impacts to the intertidal area.

CORRESPONDENCE

Two (2) e-mails were received (Attachments 1 & 2) as of October 11, 2005. No further correspondence was received as of that date.